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Vol. II

TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1940 41

No. 368 8

THE UNITED STATES OF AMERICA, PETITIONER

vs.

BETHLEHEM STEEL CORPORATION, BETHLEHEM SHIP BUILDING CORPORATION, LTD., BETHLEHEM STEEL COMPANY, ET AL.

No. 369 9

UNITED STATES SHIPPING BOARD MERCHANT FLEET CORPORATION, PETITIONER

vs.

BETHLEHEM SHIPBUILDING CORPORATION, LTD.

ON WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT

PETITION FOR CERTIORARI FILED AUGUST 22, 1940
CERTIORARI GRANTED OCTOBER 14, 1940

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VOLUME II

EVIDENCE BEFORE WILLIAM CLARKE MASON, ESQ., SPECIAL MASTER

IN THE DISTRICT COURT OF THE UNITED STATES

For the Eastern District of Pennsylvania

No. 3315 March Sessions, 1925

In Equity

The United States of America,
Complainant,

v.

Bethlehem Steel Corporation; Bethlehem Shipbuilding Corporation, Ltd; Bethlehem Steel Company; Fore River Shipbuilding Corporation; and Union Iron Works Company,
Defendants.

No. 11970. December Sessions, 1925

At Law

Bethlehem Shipbuilding Corporation, Ltd.

v.

The United States Shipping Board Emergency Fleet Corporation

Hearing before William Clarke Mason, Esq., Special Master and Referee, held in Room 313, Federal Building, Ninth and Market Streets, Philadelphia, Monday, March 30, 1931, at 10 o'clock A. M.

Present:

William Clarke Mason, Esq., sitting as Special Master in No. 3315, March Sessions, 1925, in Equity; and as Referee, by agreement, in Nos. 11970, 11972, 11974 and 11976, December Sessions, 1925, at Law.

Chauncey G. Parker, Esq., Ralph H. Hallett, Esq., and Joseph J. Brown, Esq., for United States of America and for United States Shipping Board Emergency Fleet Corporation.

Ralph B. Evans, Esq., Frederick H. Wood, Esq., and W. W. Robison, Esq., for Bethlehem Steel Corporation, Bethlehem Shipbuilding Corporation, Ltd., Bethlehem Steel Company, Fore River Shipbuilding Corporation and Union Iron Works Co.

THE MASTER: The following stipulation is agreed to by counsel for all parties and reads as follows:

Bethlehem Shipbuilding Corporation, Ltd., vs. United States Shipping Board Emergency Fleet Corporation.

District Court of the United States for the Southern District of New York, at Law, No. 33369.

United States of America vs. Bethlehem Shipbuilding Corporation, Ltd., et al.

District Court of the United States for the Eastern District of Pennsylvania, in Equity, No. 3315, March Term, 1925.

STIPULATION

Counsel representing the respective parties to the above-entitled proceedings hereby agree as follows:

1. Defendants to said proceeding now pending in the United States District Court in Philadelphia will promptly file their answers therein. As soon as practicable the Bethlehem Shipbuilding Corporation, Ltd., will begin in the United States District Court in Philadelphia a suit similar to its pending suit in the District Court in New York. The Fleet Corporation will enter a general appearance in such suit against it in Philadelphia and file an answer, it being understood that in such suit the defense of the Statute of Limitations will not be interposed by the defendant, except to the extent, if any, that it could be successfully interposed in the existing New York suit, the defendant thus to have no greater rights by way of the defense of the Statute of Limitations than it has in the existing New York suit.

The defendant will, within the time limited by court order or agreement, and if and after the Fleet Corporation's motion to dismiss the New York bill of complaint of Bethlehem has been denied, file its answer in the New York suit, so that issue may be

joined and the case placed in the calendar of the court, but the New York suit will thereafter remain passive and no proceedings will be taken therein pending the trial of the two suits in the District Court in Philadelphia.

2. The two suits in the District Court in Philadelphia will be tried together and without a jury, and all evidence taken and all stipulations of facts will be available in both cases and in the New York suit, in case it should be tried, subject always to objections as to relevancy. The two cases will be submitted to the District Court in Philadelphia simultaneously and counsel will cooperate in endeavoring to obtain from the Court findings and conclusions covering all disputed questions of fact and law, regardless of the particular grounds upon which its decree may be based.

3. In the event that the said proceeding to be commenced by the Bethlehem Shipbuilding Corporation, Ltd., in Philadelphia should be dismissed on the ground that its claim, if any, lay against the United States, all facts stipulated in either of the said proceedings in the District Court in Philadelphia, as well as all relevant evidence and all unreversed findings of fact in said proceedings, shall be available to said Bethlehem Shipbuilding Corporation, Ltd., in any subsequent proceedings to enforce its claim.

4. In case the District Court in either of the proceedings in Philadelphia shall find as a fact that no sum is owing by defendants therein to the United States or to the Fleet Corporation, and that upon the contrary there is a balance owing to defendants, or any of them, by the United States, or by the Fleet

Corporation, but is precluded from entering judgment therefor because of jurisdictional or other reasons, and such finding is affirmed on appeal, counsel for the Fleet Corporation and the United States will recommend to the proper authorities that the sum, if any, shown to be due by said finding shall be paid.

5. Nothing in this stipulation shall in any way affect the right of any party to appeal from any decision of said District Court in Philadelphia.

6. Promptly upon the filing of Bethlehem's answer in the Government's suit, counsel and experts on both sides shall cooperate in an effort to agree as far as possible upon the facts involved in the various controverted questions."

MR. BROWN: Counsel for both parties offer the stipulation of facts which was marked as Exhibit *A* in the previous proceeding.

THE MASTER: That is admitted, as there is no objection.

MR. BROWN: We suggest that that need not be copied into the record, but be attached as part of the record.

Counsel for both parties offer a first supplemental stipulation of facts marked as Exhibit B in the previous proceedings.

THE MASTER: That is accepted and entered in evidence, and will be similarly treated.

MR. BROWN: Counsel for both parties offer in evidence all of the contracts in controversy, which appear as exhibits to the answer of the Bethlehem Steel Corporation, et al., in the equity case, No.

3315. The contracts in question are referred to in the said answer as Exhibits 5 to 73 inclusive, and were offered in the previous proceedings as Exhibit C.

THE MASTER: They are admitted.

MR. BROWN: Counsel for both parties offer a memorandum of an agreement of counsel for incorporation in the record, which agreement was marked as Exhibit D in the previous proceeding.

THE MASTER: It is admitted.

MR. BROWN: It is further agreed by counsel for all parties that the reference in paragraph 3 of the stipulation which has been offered as Exhibit D is to the tankers built under Contract No. 178, and that the disputed item is the item of $199,049.07, which appears at page 15, paragraph 20, of the printed stipulation of facts, Exhibit A.

It is further agreed that the items set up by way of set-off and counter claim in the affidavit of defense of the Fleet Corporation in Action No. 11970, listed in Exhibit D under the heading Miscellaneous Accounts Receivable, $55,128.34, are to be adjusted by Bethlehem giving credit to the Fleet Corporation for one half of this amount and the Fleet Corporation waiving any claim to the balance.

There has been no agreement reached as to whether or not this item shall carry interest.

Counsel for both parties offer an additional stipulation of agreed facts, marked as Exhibit E in the previous proceeding.

THE MASTER: It is admitted. In view of the practice under the Practice Act of 1915 of Pennsyl-

vania, the Master and Referee rules that it will be the duty of counsel for the parties to read into the record such portions of the statements of claim and/or the affidavits of defense as they conceive to be admissions of facts available as evidence in these proceedings, and counsel will be permitted to do that at the close of the testimony, selecting from the pleadings such portions of them as they desire to have made part of the record in these proceedings. The Master rules that, under the equity practice of the United States, there is no necessity for reading into the record or placing in the record admissions in the equity case. The Master will rule that in the equity case he is entitled to take at full face value all admissions of the answer.

MR. BROWN: Mr. Master, it appears at page 430 of the record of the previous hearing that the Government asked that the Prayer for Relief in the Bill of Complaint filed in the equity proceedings should be amended in a certain respect. There was no objection to the amendment and it was allowed. In order that you should have the entire record before you, it might be well to repeat the motion for an amendment and show what took place.

THE MASTER: Has there ever been any written amendment filed formally, or is it a matter of record?

MR. BROWN: No, just a matter of record. It was stated by counsel for the Government in the previous proceeding that "For the principal purpose of not taking our friends, counsel for the Bethlehem Companies, by surprise, I would like to ask at this time that we be permitted to amend our Prayer for Relief in the Bill, which as far as the amend-

ment is concerned is more or less of a formality so far as our right to amend is concerned, but we have stated in the Prayer for Relief that we ask the Court to fix and determine the reasonable and proper profit to be allowed the Bethlehem Shipbuilding Corporation, and we would like to insert in the provisions for relief relating to a reasonable and proper profit the further statement 'if any.' That amendment would relate to paragraph two and paragraph six of the Prayer for Relief, and I can state on the record, if the Master thinks that is proper, how those paragraphs will read according to the proposed amendment. The second paragraph will read: 'That it be decreed that the terms and provisions in the contracts herein alleged and specified in Exhibit B annexed, in so far as they provide for unreasonable and unconscionable profits in the guise of "fixed fee for profits" or "half savings" or otherwise, are void and unenforceable and that this Court fix and determine a reasonable and proper profit, if any, to be allowed the defendant Bethlehem Shipbuilding Corporation, Ltd., upon and with respect to each of said contracts, and that said defendant be required and directed to account to the complainant for all moneys of the United States received by it on account of profits and to pay to the complainant the excess received over and above such fair and reasonable profit, if any, allowed by said Court.'

Paragraph Six of the Prayer for Relief is amended to read as follows: 'Sixth. That the defendants Bethlehem Steel Corporation and Bethlehem Shipbuilding Corporation, Ltd., and each of them, make discovery to the complainant of all the financial transactions had between them with respect to the Ship-

building contracts designated in Article-Thirty-Second to the Bill, and particularly with respect to the distribution and allotment between said respective companies of the moneys paid to the defendant Bethlehem Shipbuilding Corporation, Ltd., by the complainant, through its agency the Fleet Corporation, in excess of such profit, if any, as may be allowed by this Court upon each and all of said Shipbuilding contracts, and also of all moneys of the United States so paid to said defendant under mistakes of law, mistakes of fact, wrongful construction of the terms of said contracts, and other mistakes made by the United States Shipping Board, the Fleet Corporation, or any of their respective officers, agents or employees.' ''

There having been no objection to the amendment at the previous proceeding, it was allowed by Mr. Roberts.

THE MASTER: I understand that that amendment has been allowed and the pleadings now stand as so amended, without objection.

The Master and Referee rules that, for the purpose of the hearing before him, no part of the testimony taken before Owen J. Roberts, as Master and Referee, and none of the exhibits offered before him, will be considered as a part of the record for his consideration, unless specifically offered in evidence or referred to by counsel in so far as they appear in the previous record; that where it relates to oral testimony, reference can be made by page and number of the previous record without reading into the record here such oral testimony, and when so referred to it will be considered as a part of the record on this hearing.

HARRY BROWN, having been duly sworn, was examined and testified as follows:

BY MR. BROWN:

Q. Mr. Brown, in order to give the Master a picture of the background involved in this case, there are certain more or less formalities I would like to go through with with you. In the first place, I will ask you about your present occupation. What is your present occupation?

A. Substantially I am retired, but I do take on various lines of work, amongst which is the work in connection with this case at Bethlehem.

Q. In other words, you are employed by Bethlehem at the present time?

A. Yes, sir.

Q. When you mention Bethlehem, do you mean the Bethlehem Steel Corporation?

A. No, sir, the Bethlehem Shipbuilding Corporation.

MR. BROWN: I might say, Mr. Master, that throughout the proceeding we are apt to use the word "Bethlehem" very indiscriminately to apply to all of the Bethlehem companies, including the subsidiaries.

BY MR. BROWN:

Q. How long have you been employed by Bethlehem in connection with the preparation of the trial of this case?

A. Since November, 1924.

Q. The Bethlehem Shipbuilding Corporation, as I understand it, was organized about October 1st, 1917, was it not?

A. Yes, sir.

Q. The Bethlehem Shipbuilding Corporation rep-

resented a consolidation of five shipbuilding companies, did it not?

A. Yes, sir.

Q. And those five shipbuilding companies had been subsidiaries of the Bethlehem Steel Corporation, had they not, prior to the consolidation?

A. I so understood, yes, sir.

Q. For various periods?

A. Yes, sir.

Q. And the Bethlehem Steel Corporation was incorporated in 1904?

A. That I do not know.

MR. BROWN: I think it will be agreed that since the organization of the Shipbuilding Company all of its stock has been owned by the Steel Corporation, except possibly qualifying shares or something of the sort.

MR. EVANS: For the purposes of this case, anyhow, that will be conceded.

MR. BROWN: If we are mistaken; you can correct it.

BY MR. BROWN:

Q. The names of the subsidiaries which were consolidated into the ship company and the location of their respective plants, were as follows, were they not: First was the Union Iron Works. The plant was called Union and was located at San Francisco, California. Next was the Harland & Hollingsworth Corporation. The plant was called Harlan and located at Wilmington, Delaware. At least, when I say the plants were so called, these are the names by which they were commonly known and which are used in this proceeding. Third was the Samuel W. Moore & Sons Corporation, plant known as Moore,

location Elizabethport, New Jersey. Next was the Fore River Shipbuilding Corporation, plant known as Fore River, location Fore River, Quincy, Mass. Next was the Penn-Mary Steel Company, plant called Sparrows Point, located at Sparrows Point, Maryland. That is correct, is it not?

A. They are the shipyards and the locations, yes, sir.

Q. As a result of this consolidation, Bethlehem became the largest shipbuilding concern in the world, did it not?

A. I know of none any larger.

Q. That is both in respect to the number of shipyards and the number of employees?

A. That would be correct.

Q. And each of those subsidiary companies, at the time of the consolidation, had been what was known as an old line shipbuilding company, had it not?

A. Yes, sir.

Q. And by old line is meant a company that had been in the shipbuilding business for a substantial length of time?

A. Established for a number of years.

Q. As distinguished from the many new companies that were being organized during 1917 and the War period?

A. There were probably some prior to that that you would call a yard, because they built a number of ships after the outbreak of the World's War and the demand of the foreign governments for tonnage, which started this thing. It did not only start when the United States entered into the War.

Q. In December, 1917, in what capacity were you

employed by the Shipbuilding Company? What was your position?

A. In December, 1917, my position was technical manager.

Q. And Admiral F. T. Bowles at that time was manager of the Division of Steel Ship Construction of the Fleet Corporation, was he not?

A. I understand that is so.

Q. Incidentally, he died some time before the hearing before Judge Roberts, did he not?

A. Yes, sir.

MR. BROWN: It is probably unnecessary, but I would like to call attention to the fact that that hearing took place during the months of May and June, 1929.

BY MR. BROWN:

Q. Capt. G. S. Radford at that time was manager of the Contract Division of the Fleet Corporation, was he not?

A. That is my understanding.

Q. And at that time Charles Piez was Vice-President and General Manager of the Fleet Corporation, was he not? These are merely formal things and I am putting them in this way really to get through, more than anything else.

A. I daresay that that was so.

BY MR. EVANS:

Q. Your only doubt is as to the question of the exact date?

A. As to the exact date.

BY MR. BROWN:

Q. May I ask it in this way: at the time of the negotiations relating to the contracts in controversy, Piez was Vice-President and General Manager of the Fleet Corporation, was he not?

A. It was either a whole or a part of the time, yes, sir. I want to get this straight. Admiral Harris was in there for some time, and I do not recall just what his position was, whether he ranked Mr. Piez or not.

Q. Piez came in as the general manager about the middle of December, 1917, did he not, according to your recollection?

A. I do not know.

Q. After he became general manager Piez was in complete executive charge of all the affairs of the Fleet Corporation, was he not?

A. That was my understanding.

MR. EVANS: I am wondering whether this witness really knows these things. This man was working for Bethlehem.

MR. BROWN: Your own witness testified to this effect last time.

MR. EVANS: If it is important to get those facts accurate, why do you not get them from your own records?

MR. BROWN: I was afraid there might be some doubt about getting Mr. Piez.

MR. EVANS: You do not have to have Mr. Piez. You have the records.

BY MR. BROWN:

Q. Do you know what Mr. Piez's business had been before he joined the Fleet Corporation?

A. He was the president of the American Link-Belt Company. That is my recollection.

Q. And he became general manager of the Fleet on the resignation of Admiral Harris, did he not? Do you remember?

A. No, I do not.

Q. In the negotiations relating to these contracts in controversy, Bethlehem was represented by you and Joseph Powell, was it not?

A. Yes, sir.

Q. That was with respect to the active negotiations relating to the contracts on controversy?

A. Yes, sir.

Q. And likewise the Fleet Corporation was represented by Admiral Bowles and Mr. Radford, was it not?

A. Yes, sir.

Q. And whatever connection Mr. Piez had with the transaction was purely in a supervisory capacity, was it not?

A. That I could not tell you.

Q. Don't you know what he had to do with the negotiations relating to these contracts?

A. No. I never had any conference with Mr. Piez on these contracts. That was handled directly between Mr. Powell and Mr. Piez. My association was entirely with Admiral Bowles or Mr. Radford and Mr. Powell.

Q. Mr. Powell became president of the Fore River Shipbuilding Company in 1914, did he not?

A. Yes, sir.

Q. And he remained as president of the Fore River Company until the organization of the Shipbuilding Company, did he not?

A. The Bethlehem Shipbuilding Corporation, yes.

Q. Which I have referred to throughout as the Shipbuilding Company for brevity. On the organization of the Shipbuilding Company Mr. Powell be-

came its vice-president and operating manager, did he not?

A. Yes, sir.

Q. And he was in charge of all the activities of the Shipbuilding Company, was he not?

A. Yes, sir.

Q. Do you remember how long he remained with the Shipbuilding Company? Do you remember when he left its employment?

A. I can only give you the best of my recollection on that, Mr. Brown.

Q. I will not bother you if you do not remember.

A. I do not remember exactly when it was.

Q. At the time of the negotiations relating to the contracts in controversy, Powell was considered as a very able and experienced shipbuilder, was he not?

A. Yes, sir.

Q. He was regarded as one of the ablest and most experienced in the United States, was he not?

A. He was classed amongst the ablest, yes, sir.

Q. And as I remember, you were employed by the Fore River Shipbuilding Company from 1903 until the organization of the Shipbuilding Company; is that correct?

A. Yes, sir.

Q. And during the entire period of your employment by the Fore River Company, you were in charge of all technical work, were you not?

A. Yes, sir.

Q. And that included contracts and sales, did it not?

A. It did.

Q. On the organization of the Shipbuilding Company you became technical manager of that company, did you not?

A. Yes, sir.

Q. And you remained in that capacity until you left its employment, did you not?

A. Yes, sir.

Q. And you left its employment, as I remember, in June, 1922; is that correct?

A. Yes.

Q. During the latter part of October, during November and the early part of December, 1917, you were engaged in organizing your technical department, were you not?

A. Yes, sir.

Q. That technical department was located at Bethlehem, Pennsylvania?

A. Yes, sir.

Q. About how many men were in that technical department? There were several hundred, were there not?

A. Not at that time, no.

Q. But you were building up?

A. Building up. We had a very few men at that time and we were building up to a staff of somewhere around 400 people.

Q. You were building up to a force of about 400; is that correct?

A. Yes, I should say that is substantially correct.

Q. And the building up of that organization took a great deal of your time during that period, did it not?

A. Yes.

Q. In fact, it occupied your time almost exclusively, did it not? Can you hear the question?

A. I understand your question, but it is a difficult one to answer when you say "almost exclusively."

Q. You do not have to look ahead too far.

A. No, there were other matters that required attention that were under way, that had to be attended to, so you did not put your time exclusively upon the organization, because it did not permit it.

Q. It occupied a great deal of your time?

A. It occupied a great deal of time.

Q. Do you remember at the hearing before Judge Roberts you testified, in answer to questions of Mr. Evans, at great length about the duties that were then imposed on you in connection with the organization of that department, and how it was extremely difficult for you to find time to do anything else?

A. Yes.

Q. That is correct, is it not?

A. Substantially so.

Q. And prior to December 6 and during the period that I have referred to, you were also engaged in negotiating and consummating the destroyer contracts of December 6th, were you not?

A. Yes, sir.

MR. BROWN: I would like to offer in evidence at this point the two destroyer contracts dated December 6, 1917, executed between the Bethlehem Shipbuilding Corporation, Ltd. and the United States, which were offered in the previous proceeding as Exhibits G-157 and G-158.

THE MASTER: They will be admitted.

BY MR. BROWN:

Q. They are the destroyer contracts to which you referred, are they not?

(Witness shown Exhibits G-157 and G-158.)

A. That is the 45 of Fall River and this is the 40 at Union.

Q. Those are the destroyer contracts which you were engaged in negotiating during the period that I have referred to, are they not?

A. Yes, sir.

Q. The Bethlehem Companies had previously done business with the Navy Department of the United States, had they not?

A. Yes, sir.

Q. The cost definition referred to in these contracts was taken from the standard form of the Navy cost-plus-fee contracts which had been in use for a considerable time prior to December, 1917, was it not?

A. The cost definition?

Q. You were familiar with the Navy contract, were you not?

A. With this Navy contract?

Q. With the form of contract used by the Navy prior to December, 1917?

A. According to the best of my recollection, this is the first contract ever made on that basis.

Q. I am asking if you were familiar with the form of contract used by the Navy Department prior to December, 1917, in so far as it defined cost. Had your company had previous transactions with the Navy Department?

A. Yes.

Q. In those contracts there was also a provision relating to the determination of cost, was there not?

A. No, sir.

Q. Not always?

A. No, sir.

Q. Well, in the Navy contracts which were on a cost-plus-fee basis there was such a provision, was there not?

A. Prior to the war conditions there were not. They were all lump sum contracts.

Q. They were all on a lump sum basis?

A. Yes, sir.

Q. Your own company had a contract for destroyers with the Navy Department prior to December, 1917, had it not?

A. Yes, sir.

Q. The Fore River Company?

A. Yes, sir.

Q. And in those contracts there was a definition of the cost, was there not?

A. Only after those contracts had been moved from a lump sum basis to a cost-plus basis.

Q. There was in those contracts a definition of cost?

A. Not until they were changed to the cost-plus basis.

Q. And when was that change made?

A. According to my recollection it was after we entered into the War, and I should say, according to my recollection, it would be some time between June, 1917, and December, 1917.

Q. The negotiation of those Navy contracts took a considerable amount of your time during the period in question, did it not?

A. I should not say a considerable amount of time, no, sir, in relation to the total period of time for which those contracts were under consideration.

Q. At any rate, between the organizing of your technical department and the negotiation of the destroyer contracts, you had only a small amount of time for any other work which had to be done by your department, and that other work for the most part had to be done at night times, did it not?

A. I worked considerable at night, yes.

Q. Will you answer the question? (Question read) Is that a fair statement?

A. I do not know whether it is or not, but, nevertheless, the destroyer contracts, in so far as the price, terms and conditions of the contract, had been settled long before December 6, 1917, but we had considerable difficulty in getting the Navy Department to get them through the printing office and get them in shape for signature, so it did not take very much of the time of the Bethlehem officials from the time of the consolidation of the shipyards until the time of the execution of these contracts.

Q. Do you remember testifying at the hearing before Judge Roberts that you had only a small amount of time for other work, that had to be done between times and mostly at night times to get things together to do any kind of business at all outside of your organization at that time?

A. I do.

Q. That is a correct statement, is it?

A. Yes.

Q. Your technical department was divided into three divisions, was it not, the Contract and Sales Division, the Technical Division and the Estimating Division? Don't you remember?

A. Yes.

Q. It was?

A. Yes.

Q. And the Estimating Department was created and existed for the purpose of making whatever cost estimates might be required by Bethlehem, was it not?

A. That was the object in creating an estimating department.

Q. During the entire time that you were employed by the Fore River Shipbuilding Company until about a year before the organization of the Shipbuilding Company, Mr. Schulze had been the chief estimator at Fore River, had he not?

A. During the entire period?

Q. During the entire time that you were employed by the Fore River until about a year before the organization of the Shipbuilding Company?

A. Yes, that is correct.

Q. And during that period Mr. Schulze had been actively in charge of all estimating for that company, had he not?

A. No, not during the entire period.

Q. With the exception of about a year?

A. No, there was probably several years. He did not go with the Fore River Shipbuilding Corporation when I went there. It was some time later.

Q. But for several years prior to December, 1917, with the exception of the year immediately preceding December, 1917, Mr. Schulze had been chief estimator at Fore River, had he not?

A. That is correct.

Q. And at Fore River he was under your supervision as head of the Technical Department, was he not?

A. Head of the Estimating Department.

Q. Mr. Schulze, as head of the Estimating Department, was under your supervision as head of the Technical Department?

A. That is right, yes, sir.

Q. And the same thing occurred after the formation of the Shipbuilding Company, did it not?

A. Yes.

Q. In other words, he was head of the Estimating Division, under your supervision?

A. That is right.

Q. What are Mr. Schulze's initials?

A. H. H. Schulze.

Q. Mr. Schulze is the gentleman right here, is he not (indicating)?

A. Right there, yes.

Q. During the entire time that Mr. Schulze was chief estimator at Fore River, he and you were in practically daily contact, were you not, with respect to matters of estimating?

A. Yes.

Q. A very close business association existed between you two at that time, did it not?

A. Yes.

Q. And you regarded Mr. Schulze as a very able and experienced estimator, did you not?

A. I did.

Q. And a very careful estimator?

A. Yes.

Q. What is Mr. Schulze's present occupation?

A. I do not know.

Q. But he remained as chief estimator during the entire time you were employed by the Shipbuilding Corporation; in other words, until June, 1922?

A. Yes.

Q. And the very close business association which had existed between you and Mr. Schulze at Fore River was continued at Bethlehem, Pennsylvania, was it not?

A. It was.

Q. Admiral Bowles had been president of the Fore River Company from 1903, if you can remem-

ber, until the spring of 1914, when Mr. Powell came in as president, did he not?

A. He was there from 1903, but my recollection is that he left in 1913 and then there was an interval between his leaving and the appointment of Mr. Powell.

Q. At the time of the negotiations relating to the contracts in controversy, you and Admiral Bowles knew each other very well, did you not?

A. Yes, sir.

Q. Tell us where you had come into business association with the Admiral and the years, if you will, in a general way. In other words, about how long had you known him?

A. That is just what I was trying to recall. I think it was in about 1903 that I started association with Admiral Bowles at Washington, and I was with him substantially continuously until he retired as president of the Fore River plant.

Q. In what way were you associated with him in Washington?

A. I was chief draftsman and he was the chief naval constructor.

Q. In other words, you were on Government work at that time?

A. Yes, sir.

Q. And did that association last for several years at Washington?

A. Yes.

Q. And then you were associated with him in turn at Fore River until he left Fore River?

A. Yes, sir.

Q. And for a considerable part of the time that you were at Fore River you were vice-president of that company, were you not?

A. Yes, sir.

Q. There was every reason to suppose, was there not, that at the time of the negotiations referred to, Admiral Bowles had complete confidence in your ability as a ship estimator, as well as in your integrity?

MR. EVANS: That is objected to.

THE MASTER: It is difficult for this witness to say what Admiral Bowles had in his mind.

BY MR. BROWN:

Q. I can put it in a different way. Was there any reason to suppose that at the time of the negotiations to which I have referred Admiral Bowles had any reason to suppose that you were not a very skilful and experienced ship estimator?

MR. EVANS: That is objected to. That is a matter for the Master. That is an inference for the Master to draw, not the witness.

THE MASTER: I think I will have to sustain that objection, because we will have to get the facts from the witnesses and leave the inferences to be drawn by the Master.

BY MR. BROWN:

Q. During the time of your association with Admiral Bowles he had ample opportunity, did he not, to determine your qualifications as a shipbuilder and estimator of costs?

A. Yes, sir.

Q. Did anything occur during your acquaintance with Admiral Bowles to indicate that he did not have complete confidence in your veracity and integrity with respect to matters of business?

A. No, sir.

Q. Nothing?

A. There was nothing that came up, so far as I know.

Q. Had you any reason to suppose that Admiral Bowles did not have complete confidence in your veracity and integrity in matters of business?

A. No.

Q. Right on that point, at that time you had had a great deal of experience yourself in matters of shipbuilding, had you not?

A. Yes, sir.

Q. At the time of the negotiations in question Admiral Bowles and Mr. Powell were well acquainted, were they not?

A. Yes, sir.

Q. They had been associated together for many years, had they not?

A. Yes, sir.

Q. And Admiral Bowles likewise had had ample opportunity to determine the qualifications of Mr. Powell as a shipbuilder, had he not?

A. I should say yes.

Q. It is my understanding that early in November you were requested by Powell to prepare for a shipbuilding program for such ships as Bethlehem might be required to build for the Fleet Corporation up to the capacity of its plants; were you not?

A. Yes.

Q. And you then proceeded to prepare a diagram or a chart, did you not?

A. Yes.

Q. The chart you prepared is the paper which I show you, which has been offered in evidence in the previous proceedings as Exhibit G-34½, is it not?

A. Yes, sir, that is it.

MR. BROWN: I would like to offer that chart as Exhibit G-34½.

THE MASTER: It is admitted.

BY THE MASTER:

Q. This is the original chart that you actually prepared yourself, and the pencil marks and figures and letters on it are your own handwriting, are they?

A. Yes, sir.

Q. In preparing the chart, it was your understanding that it was to be used as the basis of all cost estimates which Bethlehem might be called upon to submit with respect to tank and cargo ships required by the Fleet Corporation, was it not?

A. That was the idea at the time.

THE MASTER: Submit to whom; to the Fleet Corporation only?

MR. BROWN: To the Fleet Corporation.

THE MASTER: I did not know whether they were building for other Governments or not.

MR. BROWN: The Fleet took over the entire capacity of the plant.

BY MR. BROWN:

Q. To clarify the back ground for the Master, the ships which had been under construction at these various shipyards of the Bethlehem Company, prior to August, 1917, had all been requisitioned by the Government, had they not, with the exception of those which were unsuitable for war purposes?

A. Not the Navy ships.

Q. In other words, the Navy ships were not

requisitioned because they were already being built for the Government?

A. Yes.

Q. And it was contemplated subsequently to that time that the entire capacity of your yard as well as those of other shipbuilders throughout the country should be devoted exclusively to Government work, was it not?

A. That is my understanding.

Q. Was the date, "November, 1917" put on that chart after its construction by you?

A. I don't remember.

Q. How about the notation "Material plus wage plus 10 percent. contingent"?

A. That was put on at the time.

Q. That would be put on before the preparation of the chart?

A. Along with the preparation of the chart.

Q. Can you tell us whether the heading "November 1917, plus material plus wage plus 10 percent contingent" was put on there before or after the preparation of the chart?

A. If it wasn't put on at that time it was put on shortly after.

Q. It is likely it was put on shortly after?

A. Well either at the time the chart was prepared or shortly afterwards.

MR. BROWN: I would like to offer the photostatic copies of the chart which were offered in the previous proceeding as Exhibits G 34, 156, 171a and 171b. These Exhibits were prepared by Judge Roberts and represent photostats made of the original chart at the time of

the hearing before Judge Roberts, with the exception of Exhibit G 34.

THE MASTER: There being no objection they will be admitted.

BY MR. BROWN:

Q. The mat or the form that was used by you in the preparation of the original chart was a form which you had on hand at that time, was it not, among your supplies at Bethlehem, Pa.?

A. Yes, sir.

Q. The figures on the left of that chart, running from one to eighteen, represents tonnage, do they not?

A. Yes, sir.

BY THE MASTER:

Q. One to eighteen represents what unit?

A. Thousands of tons; one thousand to eighteen thousand tons.

BY MR. BROWN:

Q. What do the figures on the bottom of the chart represent?

A. They represent dollars.

Q. With respect to total cost, each of these figures represents an increase of $100,000., do they not, each of the figures in each of the squares?

A. No, $10,000.

Q. I mean the figures not the blocks.

A. No, that is a million dollars. That would be $10,000.

Q. Where the nine is located would be $900,000?

A. Yes.

Q. So between each of your written figures there are ten squares each of which is supposed to represent $10,000. of total cost?

A. Yes, sir.

Q. What are the lines running from the lower lefthand corner of the chart to the upper righthand corner of the chart?

A. These lines here represent the total cost of the vessel.

Q. The total cost of what vessel? Will you point out the different designations on those lines and explain to the Master what they represent, the total cost lines?

A. For instance, we will take the 10,000 ton vessel. Go straight across here until you strike the line of the vessel and here it is a cargo vessel and here it is a tanker and then right down at that intersection gives you the total cost.

Q. What I am getting at, you have the upper one of these total cost lines running from the lower lefthand corner of the chart to the upper right hand corner of the chart. What does that line represent? It represents, or is supposed to represent, the total cost of East Coast cargo ships, does it not?

A. Yes.

Q. The line immediately underneath that represents the total cost of West Coast cargo ships, does it not?

A. Yes, sir.

Q. That is the one that is marked "Cargo West, East plus five percent"?

A. Equals the East plus five percent.

Q. The next line underneath that is designated "Tankers East", and is supposed to represent the total cost of tankers to be built on the East Coast?

A. Yes, sir.

Q. The line under that is supposed to represent

the total cost of tankers to be built on the West Coast?

A. Yes, sir.

Q. What are the lines running from the lower righthand corner of the chart to the upper top middle part of the chart?

A. They are the cost per dead weight ton.

Q. These lines are supposed to represent the cost per dead weight ton to correspond with the total cost as shown by the total cost lines, is that correct?

A. Yes.

Q. In other words, that per ton line reading, "Cost per ton cargo" is supposed to correspond with the total cost as shown by the line designated Cargo East", is that correct?

A. Supposed to be.

Q. There is a line on that chart running from over in the lower righthand corner of the chart towards the upper lefthand corner of the chart marked "Hours per ton D. W. January or June, 1922, one equals one hundred"?

A. Yes, sir.

Q. Will you explain what that line represents?

A. That line was put on at a considerable later period and has nothing whatsoever to do with the original proposition.

Q. Were the lines which have been erased and which are marked for identification as B. C. and D. on the Exhibit which has been offered in evidence as Exhibit G-156, put on the chart subsequent to its original construction?

A. They were put on and erased.

Q. Subsequent to its original construction?

A. Yes.

Q. And have nothing to do with the subject relating to the contract ships?

A. No, sir.

Q. Likewise the line which has been identified as E on Exhibit G-156, was plotted subsequent to the preparation of the chart and has nothing to do with the negotiations in controversy?

A. That is right.

Q. Will you explain how this chart is used to determine the cost of a ship we will say of 10,000 dead weight tons?

A. By taking your tonnage at 10,000 and reading across on that line to the intersection of any line here you can get the total cost of the ship, either East Coast or West Coast Cargo Vessel or Tanker, by reading down to your point here.

Q. On the lower line?

A. Yes.

Q. So what would the cost of an East Coast 10,000 ton cargo ship be according to that chart?

A. $1,750,000 or $1,745,000.

Q. And what would be the cost per ton as indicated by that chart?

A. The total cost divided by ten thousand.

Q. As indicated by that chart per ton line what would it be?

A. Around 174½ or 175. The chart was not made with any idea—

MR. BROWN: I didn't ask you anything else.

BY THE MASTER:

Q. I don't think that is clear. You asked what would be the cost per ton and Mr. Brown answered it would be the total cost dividing by ten, I understood?

A. By the tonnage, 10,000.

THE MASTER: It happened to be a 10,000 ton ship you were talking about but I thought it applied, as it was given, to everything.

BY MR. BROWN:

Q. To make it clear, what would be the total cost as shown by the chart of a 10,000 ton East Coast tanker?

A. $2,000,000.

Q. And how would you find the per ton cost of that ship as indicated by the per ton line?

A. By dividing the total amount by the dead weight.

Q. Starting with the chart will you indicate the spot on the East Coast tanker per ton line which shows the per ton cost of that ship?

A. That is that spot there (indicating).

Q. And that indicates a per ton cost of how much?

A. $200.

Q. $200. per ton?

A. In other words for the total cost of 10,000 tons it must be an intersection with the dead weight line.

Q. I think it is clear to the Master but just to make sure, your per ton lines, as I understand it, were plotted to correspond with the total cost as shown by the total cost lines; is that correct?

A. Or you might reverse it.

Q. Will you answer the question.

(Question repeated.)

A. Yes.

BY THE MASTER:

Q. Do you need a tonnage chart line to deter-

mine the cost per ton if you have the total cost of the boat and know its tonnage?

A. Not if you have the total cost but in developing a proposition of this nature you can probably have a better idea of the relation on size from your dead weight ton line than you can have from your total cost line, and that is the object of putting on your ton dead weight line.

BY MR. BROWN:

Q. With respect to the accounting methods in force at the time of these negotiations, as I understand it, for cost accounting purposes the divisions and sub-divisions into which shipbuilding costs were divided were called jobs, were they not?

A. Yes.

Q. And the job which was known as Job 12 represented substantially the complete steel hull of a ship, did it not?

A. Yes, substantially so.

Q. The plates and shapes were the principal items in Job 12, were they not?

A. Yes, sir.

Q. What did the balance of the items in Job 12 consist of?

A. Consisted of various matters.

Q. What were the principal items?

A. Well there were rivets, sternpost and stem.

Q. Castings?

A. Some castings.

Q. Forgings?

A. Well your sternpost is a forging. If you want the materials rather than the item itself I should say it consisted largely of castings and forgings, the major portion.

Q. And foundations?

A. The foundations would be made up of plates and shapes.

Q. In preparing this chart, as I understand it, your first object was to estimate the cost of duplicating a ship similar to Hull 253 which was a tanker of approximately 9100 dead weight tons, completed at Fore River about July, 1917; is that correct?

A. Yes, sir.

Q. And, as I understand it, you first ascertained from Bethlehem's Accounting Department that the cost of the material in Hull 253 had been approximately $389,000., of which approximately $150,000. represented Job 12 materials; is that correct?

A. That is correct.

Q. Then you ascertained, as I understand it, that the delivered price of plates in Job 12 with respect to Hull 253 had been $1.35 per hundred weight?

A. That is correct.

Q. That information was obtained from invoices relating to Job 12 materials, was it not?

A. That is my understanding.

Q. That was furnished you by the Accounting Department?

A. Yes.

Q. And that price was what is known as base, was it not?

A. No, sir; that was delivered price.

Q. That was a delivered price?

A. Yes.

Q. Do you remember what the base price of these materials was?

A. I think it was about $1.15. That is just my recollection.

Q. The current prices at the time you prepared this chart which had been agreed on by the Steel

Manufacturers in the War Industry Board, representing the United States, with respect to plates, was $3.25 base f. o. b. Pittsburgh, was it not?

A. That is right.

Q. And the current freight rate from Pittsburgh to Fore River at that time was 24 cents per hundred weight?

A. 24 cents per hundred weight.

Q. And, as I understand it, in preparing this chart you added 10 cents to the current freight rate which made a total delivered price of $3.59 as of the time you prepared the chart for plates; is that correct?

A. There was some reason for arriving at that ten cents.

Q. I am asking you if that is what you did?

A. Yes, that is correct.

Q. And then you figured that that price of $3.59 represented 2.66 percent. of the delivered price of Job 12 plates which had been included in Hull 253, did you not?

A. Yes.

Q. Using that percentage of 2.66, you then estimated that the material cost of Job 12 materials for a 9100 ton tanker similar to Hull 253 to be built during the period of construction that was contemplated was $150,000 times 2.66 or $399,000. Is that correct?

A. Yes.

Q. As I understand it, you then ascertained from Bethlehem's Accounting Department that the returned cost of material for Hull 253, other than such material as had been included in Job 12, was approximately $239,000.00; is that correct?

A. Yes.

Q. Would it help you to have your explanation before you?

A. Well, I can remember quite a lot of it. That is correct but I presume that you are giving me the figures I had before and it would only be a question of getting my data together.

Q. Now will you describe in a very general way the nature of the materials other than those contained in Job 12?

A. You have plates and shapes, rivets, steel castings, iron castings, steel forgings.

BY MR. EVANS:

Q. Is that Job 12 you are talking about?

A. No, this is other material. And you have considerable pipe, valves, fittings, all kinds of hardware, lumber, paints, rubber, canvas, rope, and then you have a lot of manufactured material which is classed as shipbuilding material, such as pumps, blowers, all kinds of gauges and fittings, and you have winches, windlasses, anchors and chains, small boats, davits, life saving equipment of all kinds, galley outfits, navigating outfits, hotel equipment.

BY MR. BROWN:

Q. Materials of that nature?

A. And materials of such nature.

BY MR. EVANS:

Q. Where do boilers and machinery come in?

A. The boilers and machinery at Fore River were purchased —

Q. Well, they are not included in job 12?

A. No, they go in other material.

BY MR. BROWN:

Q. As I understand it, in preparing this chart, you obtained from the Purchasing Department at Bethlehem information as to the current prices of

some of the major items of materials other than those contained in job 12, and compared such prices with the prices of corresponding items entering into Hull 253; is that correct?

A. Insofar as possible.

Q. And as a result of whatever comparison was made by you arrived at a factor of 1.75 percent. as the factor of increase to be used in determining the current price of materials for the purposes of this chart?

A. Yes, sir.

Q. Multiplying 239,000 by 1.75 gave you $418,000 as the estimated cost of materials other than Job 12 for an East Coast Tanker of 9100 dead weight tons, is that correct?

A. Yes, sir.

Q. That made a total estimated cost of material of $817,000; is that right?

A. That is right.

Q. As I understand it, you then ascertained that the average hourly earnings of direct labor on Hull 253 had been 38.75 cents per hour, is that correct?

A. That is right.

Q. How were those average hourly earnings determined?

A. They were determined, as I understand it—

Q. Well, did you determine them?

A. No.

Q. How would they be determined?

A. You will have to ask Mr. Geiss, who was in the Accounting Department, what method they used to determine that.

Q. What would be the general way? I want it for the information of the Master. Now, in the usual manner, are such average hourly earnings determined?

A. By the total number of hours worked by the people divided into the total amount paid them on direct labor. It probably may have included some others. I don't know just what the detail was that went into it.

Q. At any rate it was a figure supplied to you by the Accounting Department?

A. Yes.

Q. Then, as I understand it, you estimated that the average hourly earning rate of direct labor under the Boston Navy Yard wage scale at the time you prepared this chart would amount to 50 cents per hour; is that correct?

A. Approximately to 50 cents an hour.

Q. Well you used that 50 cents per hour in connection with your preparation of this chart, did you not?

A. Yes, sir.

Q. As representing the average hourly earning rate of direct labor under the Boston Navy Yard scale?

A. Yes, sir.

Q. And that rate represented an increase of 29 percent. over the earning rate of direct labor on Hull 253, did it not?

A. Yes, sir.

Q. Did you determine yourself the average hourly earning wage of direct labor at the Boston Navy Yard?

A. I think not.

Q. You think not?

A. No.

Q. Who did that for you?

A. I think I got that from the Accounting Department. I think that came from them. I haven't

any recollection of figuring it out myself at all. In fact I couldn't.

Q. Who was the head of the Accounting Department at that time?

A. You mean at the Fore River plant?

Q. At the time you prepared this chart?

A. I don't know who succeeded Mr. Schulze.

Q. It was whoever succeeded Mr. Schulze?

A. Well I wouldn't say I got it from there because I got all that information from Mr. Geiss.

Q. But the head of the Accounting Department at that time was the man who succeeded Mr. Schulze?

A. The head of the Fore River Accounting Department was the man who succeeded Mr. Schulze.

Q. Was it from the Fore River Accounting Department you obtained these figures?

A. They must have gotten them from Fore River.

Q. You must have?

A. No, not necessarily. I may have gotten them from one of the accountants at Bethlehem who got them from Fore River.

Q. In other words you probably asked some accountant up at Bethlehem to obtain them and that man would communicate with Fore River and obtain those figures which you desired?

A. That is very likely so.

Q. With respect to the labor item, as I understand it, you used an allowance of 30 percent. as an allowance for possible decrease in the efficiency of labor, did you not?

A. Yes.

Q. And that added to the allowance of 29 per cent. which we have been discussing made a factor of 1.68 for use in determining the cost of labor in

connection with an East Coast Tanker of 9100 tons, did it not?

A. Yes.

Q. You then ascertained from the Accounting Department, did you not, that the total direct labor cost on Hull 253 had been $326,000.?

A. Yes.

Q. And you then multiplied that figure by your factor of 1.68 and arrived at $548,000. as the estimated direct labor cost for an East Coast Tanker of 9100 dead weight tons, did you not?

A. Yes.

Q. As I understand it, in determining the allowance to be made for plant operating expense and administration and general expense, including depreciation, taxes and insurance, you first considered the past experience of Fore River which showed that the cost of such items had averaged approximately 65 percent. of the cost of direct labor, did you not?

A. No.

Q. You did not do that?

A. No.

Q. What did you do in determining the factor of 65 percent.?

A. Well that was more or less a factor of judgment which anybody with experience, their opinion would be as good as anybody's else, perhaps, but we did have figured out, with the plant at Fore River, while I was connected with it, that operating at a certain capacity that we would expect to have a 65 percent. overhead. That was under normal conditions.

BY MR. EVANS:

Q. You mean 65 percent. of the direct labor?

A. Of the direct labor. I thought that was understood as our overhead. Our overhead, including A. S. & G., had been considerably in excess of that, so it was fair to estimate that with the large increase in the amount of work that you were going to do, probably working two shifts, or something of that kind, that the overhead would not rise, but you could look for a substantial decrease and you could look for a decrease possibly over the overhead of a normal period. So it was finally settled upon as being 60 percent. to cover your total overhead.

Q. In overhead you include plant operating expense?

A. In the preparation of these figures, yes, sir.

BY MR. BROWN:

Q. When you refer to A. S. & G. I take it for granted you referred to Administration, Selling and General Expense?

A. Yes, sir.

Q. There would be no selling expense here?

A. There would be no selling. That would be one of the items that would be eliminated, but if you will permit me to say, the selling expense is a very minor item in shipbuilding.

Q. You contemplated a capacity production at your various yards under the Fleet program?

A. Yes, sir.

Q. And the items of Administration and General Expense, as I understand it, were more or less fixed items as compared with the other items of course entering into shipbuilding, were they not?

A. That you will have to ask the accountants. They got the information on that. I utilized what I got.

Q. As I understand it then you would not say

that the regular overhead charge at Fore River prior to September, 1917, had been 65 percent. of the cost of direct labor?

A. No, I wouldn't say that.

Q. You would not say it?

A. No.

Q. Applying your 60 percent, factor to the estimated direct labor cost of $548,000., gave a figure of $329,000. as the estimated cost of overhead, did it not?

A. Yes.

Q. That overhead included plant operating expense and administration and general expense, including depreciation, taxes, insurance and so forth?

A. That is what I understand; that is what was to be included.

Q. Adding that figure of $329,000. to your previous estimates for labor and material, gave a total of $1,694,000. as the estimated cost of material, labor, operating expense and overhead for an East Coast tanker at 9100 dead weight tons, did it not?

A. Yes.

Q. As I understand it, you then added 10 percent. to this total of $1,694,000. to cover equipment which you contemplated that Bethlehem would be required to furnish in connection with the Fleet ships and which the owners had furnished in connection with Hull 253, as well as special equipment required by the Government for war purposes and extraordinary contingencies, did you not?

A. Yes, sir.

Q. And this amount—allowance of 10 percent. produces an estimated cost for an East Coast tanker of 9100 dead weight tons of $1,863,000., does it not?

A. Yes.

Q. In a general way what was the equipment which had been supplied by the owners in connection with Hull 253? Would that be what is known as Hotel equipment?

A. Yes, sir.

Q. Relating principally to dining room equipment, did it not, and kitchen equipment?

A. Well it is bedding, crockery, silverware, cooking utensils.

Q. After finding that figure with respect to the tanker of 9100 dead weight tons, as I understand it, you then proceeded to determine the approximate probable cost of a tanker of 14,950 dead weight tons similar to Hulls 158 and 159 which had been completed at the Sparrows Point Plant in March and July 1917, respectively, did you not?

A. Yes, sir.

Q. And you first ascertained from the Accounting Department that the returned cost in connection with each of these ships was as follows: Job 12 materials $267,000.00; other materials $328,000; direct labor $451,000. Is that correct?

A. Yes, sir.

Q. Explain what is meant by the returned cost that we have been talking about?

A. The returned cost is the book cost of the ship.

Q. In other words, the actual cost?

A. Actual cost.

Q. Determined after completion of the ship?

A. Yes, sir.

Q. As I understand it, you then applied to such costs in connection with Hulls 158 and 159, the same equation factors which you had used in connection with the returned cost of Hull 253 and allowed the

same percentage of direct labor cost to cover plant operating expense, administration and general expense, including depreciation, taxes and insurance. Is that right?

A. Yes, sir.

Q. You likewise allowed the 10 percent. of the total estimated cost of material, labor and overhead, to cover war zone requirements and extraordinary contingencies?

A. Yes.

Q. As well as hotel equipment?

A. I did not investigate to find out whether the specifications required the contractors to furnish the hotel equipment or whether the owners furnished it on those ships.

Q. At any rate you made the same 10 percent. calculation?

A. Yes.

Q. As a matter of fact, on that hotel equipment, in connection with Hulls 158 and 159, isn't it a fact that the hotel equipment had been supplied by the Sparrows Point plant?

A. I don't know.

Q. Didn't you ever check that up?

A. No.

Q. The cost of a tanker of 14,950 dead weight tons, that is an East Coast tanker, determined by you in the manner that you have testified to, was $2,736,000. was it not?

A. If that is the sum total that you have got there, yes.

Q. Don't you know whether that was the cost?

A. No. The exact figures I could tell you was around $2,740,000., but I cannot tell you just the percentage.

Q. I show you a paper called "Description of Graph" offered in the previous proceeding as Exhibit G-154 and ask if that paper was not prepared either by you or on the basis of information supplied by your to Bethlehem counsel?

A. Well that was prepared on the basis of information supplied by me, yes sir.

Q. Referring to that I ask you whether the total cost of the 14,950 dead weight ton tanker, East Coast, as determined by you, was not $2,736,000.?

A. That is what it indicated in this computation there, yes, sir.

Q. And that computation was based on information furnished by you to Bethlehem counsel?

A. Yes.

Q. Then, as I understand it, having ascertained the estimated cost of the two tankers, to which you have referred, you then marked a spot on the chart to indicate the cost of the East Coast tanker of 9100 dead weight tons and another spot to represent the cost of the East Coast Tanker of 14,950 dead weight tons. Is that correct?

A. Yes, that is correct.

Q. And you then drew a line through those two spots, did you not? Would you like to see your explanation?

A. No, I don't want the explanation. I can tell you what it is. It went through those spots, that is the line carried down to zero.

Q. In other words you carried that line from those two spots down to zero?

A. Yes, that is my recollection.

Q. And that line which you drew through those two spots to zero was intended to represent the es-

timated cost of a tanker of any size to be built on the East Coast, was it not?

A. Yes.

Q. And that line is marked on the chart as "Tankers East", is it not?

A. Yes.

Q. The total cost line?

A. Yes, sir.

Q. Now, as I understand it, you then estimated that upon the basis of your experience the cost of tankers to be constructed in the West Coast yards would be approximately 5 per cent. higher than in the East Coast yard and upon that that estimation you drew the line on the chart representing the total cost of any tanker to be built on the West Coast. Is that correct?

A. Yes, sir.

Q. And that is the line which is marked "West Coast plus 5 per cent."?

A. Yes.

Q. Which is marked "Tankers West, East plus 5 percent."; is that correct?

A. Yes, sir.

Q. Will you explain why you took this 5 percent. to represent the difference between the cost of the East and West Coast tankers?

A. Yes. The freight rate on the West Coast was 50 cents per cwt. higher, than it was on the east coast. We took on a 10,000 ton boat, that would be approximately 4,000 tons of material to be shipped, and we took it flat at 4,000 tons. Then on the approximate amount of labor which was involved we increased the labor 10 percent. on the basis that the labor rates on the west coast were that much higher than they

were on the East Coast, and the labor was taken at $600,000, so that gives you $100,000. increase on the West Coast which was 5 percent. on your $2,000,000. Now there wasn't any increase in the overhead on the West Coast because the overhead operated on quite a different basis than what they did on the East Coast, so that the overhead was taken practically on the same basis it would take to operate on the East Coast and on the West Coast, but the percentage on the direct labor would be different.

Q. And, as I understand it, you worked that up from figures which were submitted to you by the Accounting Department at that time?

A. On the freight?

Q. The figures which you have been talking about to show the difference between the East and West Coast costs, was that based merely on your experience or on figures you obtained?

A. No, we got the rates from the Traffic Department, the freight rates. Now I might explain that that would not be sufficient to cover because that was only on your heavy materials and you take in the shipment of machinery you have a much larger difference, but it was merely taken as a flat to get a reasonable differential between construction on the East Coast and on the West Coast.

Q. In other words, it was a matter you worked up with the Traffic Department at the time in question?

A. I got the information of the difference in freight charges from the Traffic Department and on the wage business that came from the Accounting Department.

Q. And you, as I understand it, to proceed with the construction of the chart, in order to arrive at

the cost of a cargo ship you estimated upon the basis of your experience that a tanker of 10,000 dead weight tons would cost about 15 percent more than a cargo ship of that tonnage and that a tanker of 15,000 dead weight tons would cost about 10 per cent more than a cargo ship of that tonnage. Is that correct?

A. Yes.

Q. Then, as I understand it, the points representing these differentials in cost were spotted on the chart from the line representing the total cost of East Coast tanker and through those two spots, the line marked "Cargo East", was constructed; is that correct?

A. That is right.

Q. Then from that line, as I understand it, by an allowance of 5 percent. for increased cost on the West Coast, the line marked "Cargo West equals East plus 5 per cent," was constructed; is that right?

A. That is right.

Q. Of course the 5 per cent. being based on what you have already explained?

A. Yes, sir.

MR. BROWN: I would like to offer in evidence a letter which was offered as Exhibit G-37 before Judge Roberts, being a letter dated October 26, 1928, addressed to Ralph B. Evans, Esq., by Joseph J. Brown.

THE MASTER: It is admitted without objection.

MR. BROWN: The letter reads:

"In connection with Mr. Harry Brown's description of his method of arriving at the

costs delineated on his graph, information is requested as to whether or not Mr. Brown used the cost data of any hulls other than 253-4 and 158-9. If Mr. Brown did use the cost data of other hulls, information is requested as to which hulls were so used and what the data was in connection with those hulls. Information is also desired as to whether Mr. Brown applied the same factors to the data on these other hulls as he applied to Hull 253 or whether he used other factors and, if so, his method of arriving at those factors.

Information is also desired as to the data or method which Mr. Brown used in arriving at his thirty per cent. addition for the inefficiency of labor contained in the factor 1.68, applying to labor costs.

Have you received any report from Mr. Robinson as to the number of pounds of steel represented by the invoices for Hulls 253-4, which you returned to him for that purpose?"

I would also like to offer in evidence letter dated October 27th, 1928, addressed by Ralph B. Evans to Joseph J. Brown, which has been offered in the previous proceeding as Exhibit G-38.

THE MASTER: It is admitted without objection.

MR. BROWN: The letter reading:

"Answering your letter of October 26th:

(1) As explained in Mr. Brown's memorandum the only hulls which he considered in arriving at his estimate were 253-254, 158-159.

(2) We are unable to supply you with any data in support of Brown's estimate of 30% for inefficiency of labor. This was merely an estimate based upon his own opinion and the opinion of others whom he consulted.

(3) I have not yet heard from Mr. Robinson as to the discrepancy between the amount of steel shown in the invoices and the amount of steel actually furnished."

Q. It took you a considerable time, did it not, to get together the cost data which was used in connection with the preparation of the chart?

A. It would take some time. How much I really don't know.

Q. Aside from the information which you said you obtained from the Accounting and Purchasing Departments, did you receive any assistance of anyone in connection with the preparation of the chart?

A. No.

Q. You did not ask Mr. Schulze to assist in the preparation of the chart in any way?

A. No.

Q. Did you advise him that the chart was being prepared?

A. No.

Q. You never discussed the chart with him either before or after its preparation, as I understand it?

A. No.

Q. As a matter of fact, Schulze never knew of the existence of the chart until long after the negotiations with the Fleet Corporation, did he?

A. That is right.

Q. As a matter of fact, Mr. Schulze could readily have obtained from your Accounting and Purchasing Departments all of the data which you acquired

and used in connection with the preparation of this chart?

A. He could.

Q. And he would have been fully competent to determine the cost for Job 12 materials similar to Hull 253?

A. Only in part.

Q. There was something about your method that he would not have been familiar with, or, in other words, my question is couldn't Mr. Schulze have made the same computation which you did with respect to Job 12 for materials for a ship similar to Hull 253?

A. Yes, he could.

Q. Did Mr. Schulze assist you in connection with your explanation of the chart after your re-employment by Bethlehem?

A. No, sir.

Q. Now, as I understand it, from 1914 until Mr. Powell left Bethlehem's employment, he and you were together in very close business association with respect to all matters affecting costs, were you not?

A. Yes, sir.

Q. Mr. Powell, as I understand it, had the final decision with respect to matters of estimating, did he not? In other words, he was the active head of the shipbuilding, was he not?

A. He was the active head of the shipbuilding.

Q. You would regard him as your superior with respect to all matters?

A. Yes.

Q. When did you first take up the question of this chart with Mr. Powell?

A. Well that I cannot say definitely but it seems to me that the first time that I took it up with him

was after we came back from Washington and submitted the original proposals.

Q. And you had never discussed the chart with him prior to the time you returned from Washington after submitting the original proposals?

A. To the best of my recollection, no.

Q. You were in practically daily contact with Mr. Powell during that period, were you not?

A. No.

Q. You were not?

A. No.

Q. As a matter of fact you saw very little of him, I suppose?

A. At that time we met by appointment.

Q. You met by appointment

A. Yes.

Q. You saw very little of him during that time?

A. Well, it may have been little or may have been much, I can't recall.

Q. At any rate you were not in very close contact with respect to questions of estimating, were you? You were not in very close contact with Mr. Powell with respect to questions of estimates and estimating?

A. No.

Q. In other words, was estimating a matter of frequent conference between you and Mr. Powell or, to put it another way, instead of saying estimating, was the subject of cost the matter of repeated discussions between you and Powell at the time in question?

A. No.

Q. Did you have any costs discussions with him preceding the submission of your first proposal to the Fleet Corporation and following his original instructions to you?

A. I cannot recall whether there were or whether there were not.

Q. To the best of your recollection the first time that you mentioned this chart to Mr. Powell, as I understand it, was when you returned from Washington after your conference of December, was it?

MR. EVANS: That is not what he said. I do not want you to put words in his mouth.

MR. BROWN: I have no thought of that. If Mr. Brown did not say that let us get what he did say.

BY MR. BROWN:

Q. When did you first discuss this chart with Mr. Powell?

A. I think the first time that Mr. Powell knew about the chart was when he called for me to come to Washington with him, or to meet him.

Q. And when was that?

A. That was the date, I suppose the 18th of December.

BY MR. EVANS:

Q. The 18th of December, 1917?

A. 1917.

BY MR. BROWN:

Q. Was Mr. Powell located at Bethlehem, Pa., during the period of the construction of this chart and up to December 18, 1917?

A. His headquarters were at Bethlehem.

Q. But he traveled a great deal?

A. Yes.

Q. And wherever possible you traveled with him, did you not?

A. No.

Q. Were you here when Mr. Powell testified before Mr. Roberts in the last proceeding?

A. Yes.

Q. Did you hear him testify to that effect, that wherever possible you two traveled together during that period?

A. Wherever possible? That depends on what you mean. It was possible for me to travel with him continuously.

Q. However you and Mr. Powell were very closely associated during this period?

A. We were.

Q. When you and he had been at Fore River you were in the closest possible business association on matters that affected cost, were you not?

A. That is right.

Q. And then the Estimating Department was abolished sometime previous to the organization of the Shipbuilding Corporation, was it not?

A. Yes.

Q. And then you and he did all the estimating, did you not?

A. There was practically no estimating done during that time.

Q. Whatever estimating was done, you and he did it, did you not? You and he took the place of the Estimating Department, didn't you?

A. There was no estimating department. I don't just know how to answer you.

Q. Mr. Powell testified—I would just like to refresh your memory—at page 543 in the proceeding before Mr. Roberts, that in 1916 we decided to abolish the estimating department because we thought that he (meaning you) and I could guess better than

the estimating department could estimate it. Is that correct?

A. I daresay that is a correct statement.

Q. Then he testified: "Mr. Brown and I were together on the average of several hours a day. The costs were one of the most vital things we were facing and they were the subjects of discussions that were lengthy and frequent and covered all of the different answers that were continuously cropping up and we compared our figures and so forth." That is correct, is it not?

A. Yes.

Q. And that was the situation which prevailed at the time you prepared this chart, was it not?

A. I think Mr. Powell's statement is entirely too general there when he says we were together several hours a day, because there were days I did not see Mr. Powell, but when we were together the subject came up and would be thoroughly discussed between Mr. Powell and myself, and at that period the question of what things were going to cost was something that was up in the air.

Q. Costs were one of the most vital things in which your company was interested at that time, were they not?

A. I don't know how to express it as being vital. I should say it was an important factor.

Q. And they were a matter which was discussed between you and Mr. Powell very frequently during this period, were they not?

A. Now which period?

Q. During the period of the construction of this chart and up to December 18, 1917?

A. Well, I should say not.

Q. You would say not?

A. Yes.

Q. Do you think they were discussed at all between you and Mr. Powell during that period?

A. The only discussion that I recollect having with Mr. Powell about the preparation of this chart, or the preparation of the figures, I wouldn't say that the chart was mentioned but I believe he knew how I was to go about it, was a question of labor efficiency and I not only talked with Mr. Powell about it but with Mr. Smith about it and I talked to the managers of each of the plants about it.

Q. That was during the preparation of the chart?

A. Yes, all during the preparation of the figures from which the chart was made.

Q. Did you tell Mr. Powell that you intended to make or that you had made a chart similar to this prior to December 18th, 1917?

A. No. I didn't think that was necessary.

Q. Never said anything about it?

A. No.

Q. In other words, as I understand it, the estimating was your job and that you did not consider that Mr. Powell would be interested until you had completed your estimates and he called for them: is that correct?

A. I should say that that probably would be substantially correct, because that was the custom we had always followed. I never bothered Mr. Powell until figures had been completed and then talked them over with him.

Q. He knew you were entirely competent to perform the duties which were assigned to you which included estimating and that your natural course of procedure would be to perform that duty and then submit to him what you had done when he asked for it; is that correct?

A. I should say if you change that knew to thought it might be correct.

(Recess from 1 o'clock P. M. to 2 o'clock P. M.)

2 p. m.

HARRY BROWN, examination resumed.

BY MR. BROWN:

Q. I wanted to ask you again how you got your estimate of fifty cents as representing the average hourly earning rate under the Navy Yard scale which you used in connection with your chart?

A. We were ordered, Bethlehem was ordered, to put in the Navy Yard rates at its plants; some time in October, I believe it was, of 1917.

BY MR. EVANS:

Q. You mean ordered by the Fleet Corporation?

A. I do not know whether it was ordered or whether it was approved that they be put in by both the Fleet Corporation and the Navy Department, and that would form substantially the basis of allowances for increased wages to be allowed on contracts.

BY MR. BROWN:

Q. How did you arrive at that, is what my question is directed to?

A. Yes, but I thought to make the picture complete you had better understand how the thing came. Now just what the Accounting Department did in arriving at their approximate fifty cents I do not know, but the natural assumption would be that they would take the different departments and the

rates in the department and adjust them to correspond to the Navy Yard rate, which was a higher rate than was at the shipyard.

Q. It was something that you directed somebody in the Accounting Department to do for you?

A. Not directed, the Accounting Department gave me the probable figure. Now at the time at which I was working on this subject, the rates had not all been put into effect, and there was no question but what a considerable judgment would have to be exercised by somebody as to what the final rate would be. Whether that was by me, after getting from the Accounting Department what the proper rate to use would be, or by somebody else, has just gone from my mind altogether; but that is the manner in which the proposition was handled.

Q. You do not recall from whom in the Accounting Department you got the information with respect to this 50-cent rate?

A. No, I do not. It was either Mr. Geiss or one of the others who were stationed at Bethlehem, but who were in constant touch with the various yards in connection with their accounting systems.

Q. Let me ask you again, because I do not think that your previous answers are entirely clear, as to when you first advised Mr. Powell as to the existence of this chart which you prepared.

A. To the best of my recollection, he was advised of the existence of this chart on the 18th of December, 1917.

Q. And that was at your conference in Washington on that date?

A. Yes, when I prepared the other chart in Washington.

Q. When you prepared the chart, which we will refer to as the second chart, in Washington?

A. Yes, sir.

Q. And as you recall at the present time that was the first time that you had advised Mr. Powell as to the existence of this first chart which has been offered in evidence; is that correct?

A. To the best of my recollection, that is correct.

Q. Did you then tell him the basis upon which that first chart had been prepared?

A. Yes, sir.

Q. Did you explain it to him in detail?

A. Yes, sir.

Q. At that time?

A. Yes, sir.

Q. You showed him or explained to him exactly how you had prepared the chart which has been offered in evidence?

A. I explained to him how the figures were arrived at.

Q. How the figures were arrived at?

A. Yes, sir.

Q. There was a conference in Washington on December 12, 1917, between you and Mr. Powell, representing the Bethlehem Company, and certain representatives of the Fleet Corporation, who, I think, were Admiral Bowles and Mr. Radford, was there not? That is referred to in your proposal of December 13th. Do you recall that conference?

A. No, not especially by that date.

Q. Let me refresh your recollection by showing you this letter of December 13th, which appears at page 201 of the Concession of Documentary Evidence, and which states in the first paragraph "Re-

ferring to conference on December 12, 1917, between representatives of the Emergency Fleet Corporation and of this Corporation," namely, Bethlehem. That is the conference to which I am referring. You remember that letter, do you not?

A. I remember the letter, yes, sir.

Q. As a matter of fact, you attended the conferences with Mr. Powell relating to the negotiations with respect to the contracts in controversy, did you not? You attended the Washington conferences relating to the contracts in controversy, did you not?

A. The present contracts, yes.

Q. And one of those conferences took place on December 12, 1917?

A. Yes.

Q. As a matter of fact, the proposal of December 13th, which I have shown you and which was offered in evidence as Exhibit G-104 in the previous proceeding, was prepared by you and Mr. Powell in Washington on the evening of December 12th, was it not?

A. Yes.

MR. BROWN: I will offer in evidence the letter which was previously offered as Exhibit G-104 and which appears at page 201 of the Confession of Documentary Evidence.

THE MASTER: If there is no objection, it will be admitted.

BY MR. BROWN:

Q. It was contemplated, at the time of that December 12th conference which is referred to in Exhibit G-104, that the ships which Bethlehem would

be called upon to build for the Fleet would be certain of the types and tonnages designated in that letter of December 13th, was it not?

A. Yes, sir.

Q. And at that time, as I understand it, namely, December 12th, you were fully prepared to submit estimates for all tank and cargo ships referred to in the proposal of December 13th, were you not?

A. I should think so.

Q. You should think so?

A. Yes.

Q. You prepared your chart, did you not, Mr. Brown?

A. Yes.

Q. And that was all that you considered necessary to enable you to present estimates upon any tank or cargo ship which the Fleet Corporation might have required, was it not?

A. That is right.

Q. The chart was so regarded by you; is that correct?

A. Was regarded so by me.

Q. Mr. Powell understood at the time of the December 12th conference, did he not, that you were prepared to submit estimates on any of the tank and cargo ships which were referred to in the proposal of December 13th?

A. I daresay that he understood.

Q. You daresay that he understood?

A. Yes.

Q. You do not mean to say that you had a conference down there in Washington with Mr. Powell and representatives of the Fleet and afterwards, in conference with Mr. Powell, prepared this letter of December 13, 1917, and did not advise him that you

were in a position to submit estimates with respect to any of the tank and cargo ships there referred to?

A. That does not seem reasonable.

Q. It does not seem reasonable?

A. No, it does not.

Q. So Mr. Powell must have been advised by that time, you think, as to your chart and its basis; is that correct?

A. That is probably so.

Q. So that it was probably at the time of the December 12th conference that you advised Mr. Powell with respect to your chart, instead of the conference of December 18th; is that correct?

A. That would appear to be correct.

Q. And when you advised him as to your chart at that time you probably explained the basis of its preparation, did you not?

A. Very likely so. That would be natural.

Q. So, in all probability, Mr. Powell fully understood not only the nature of the chart but the basis of its preparation as early as December 12, 1917, did he not?

A. Probably did, yes, sir.

Q. So Powell as early as December 12th understood that you were fully prepared to submit estimates on any of the tank and cargo ships that were required by Bethlehem, did he not? That is a simple question, is it not?

A. Oh, yes, that is perfectly simple, Mr. Brown. I am trying to project myself back into that period. It is quite a period.

(Question read.)

A. Mr. Powell understood that I had made some preparation for it, yes.

Q. Well, now, Mr. Brown, let us see if we have understood it. I thought at the time of the December 12th conference Mr. Powell fully understood all about your chart and the basis of its preparation. Now do you wish to explain what you have said on that subject?

A. Mr. Powell was acquainted with it at that time, Sir, yes.

Q. There is no doubt about it that he knew all about your chart at that time and the basis of its preparation?

A. I do not know whether he knew all about it or not, but he knew about it.

Q. Mr. Brown, I thought you had said that you had fully explained the chart and its basis to him at the time of the December 12th conference, and that it would be very unreasonable to think that you had not?

A. Possibly so. I explained to him the basis on which the chart was prepared, but I do not know that I explained to him just how the chart was prepared.

Q. You think all you told him was that there was a chart, but you did not say any more about it at that time; is that correct?

A. Very likely so, because he was familiar with the type of this character of plotting.

Q. And you knew at the time of the December 12th conference that you would be shortly called on to present estimates of cost, did you not?

A. Yes.

Q. And you had asked the Fleet Corporation to give the matter as speedy attention as possible, had you not?

A. The Company did, yes; Mr. Powell, yes.

Q. So that at the time of your December 12th conference both you and Mr. Powell knew that within a very few days, or a very little longer than that, you would be called on to submit estimate of cost, did you not?

A. We did not know how long it would be.

Q. You thought it would be in the immediate future, did you not?

A. We often thought there would be things done in the immediate future down there and sometimes it took two, three, four or five months.

MR. BROWN: I just would like to note in the last paragraph of the letter of December 13th which has been offered in evidence, appearing at page 212, the statement "It is requested that the proposals in this letter be considered immediately and that representatives of this company be called in conference with a view to settling the Emergency Fleet Corporation's requirement for vessels from its yards at the earliest practicable date." And on page 211: "Until the Emergency Fleet Corporation has settled on the types and sizes of vessels that it may desire to order from us for construction at the above plants, no definite proposals as to fees per ton and estimated costs are submitted."

BY MR. BROWN:

Q. So you and Mr. Powell understood at that time, did you not, that you would be called upon by the Fleet to furnish such estimates at a very early date?

A. We expected to be called upon to furnish estimates to the Fleet Corporation.

Q. At an early date, did you not?

A. I will accept that, at an early date.

Q. The sooner the better?

A. I would not say that.

Q. You would not say that?

A. No.

Q. It was a matter of indifference to you; is that correct?

A. No, it was not a matter of indifference to us. It was a matter of the celerity with which the Fleet Corporation would act.

Q. And you were urging it to give the matter very prompt attention, were you not?

A. Yes.

Q. And notwithstanding that, as I understand it, you now state that at the time of the December 12th conference there was no discussion between you and Mr. Powell as to the estimates which you had prepared and that you merely mentioned to him that there was such a thing as a chart; is that correct?

A. I do not recall.

Q. You do not recall what you said?

A. No, not absolutely.

Q. I will ask you again, is it not probable, under the circumstances which existed at that time, that you and Powell would have discussed costs at that time, if you had not discussed them previously; that Mr. Powell would have asked you what you had done in the way of preparing estimates of cost; and that you would have fully explained the chart to Mr. Powell and the basis of its preparation? Is not that what would have happened in all likelihood at that time?

A. That is probable, that such a thing did happen.

Q. So that it is probable that as early as December 12th Powell understood that you had prepared a chart, and also understood the basis upon which the chart had been prepared; is that correct?

A. I should say that could be probable.

Q. That would be probable?

A. Yes, might be probable.

Q. Then after submitting the December 13th proposal, as I understand it, you and Mr. Powell waited for the Fleet Corporation to inform you as to the types and sizes of ships that were required; is that correct?

A. Probably so.

Q. And the next you heard of the proposition was just preceding the conference of December 18th; is that correct?

A. Understand, Mr. Brown, that Mr. Powell handled most of these things independent of me.

Q. Very well, but the next you were called into the transaction was just prior to the conference of December 18th, was it not?

A. Yes.

Q. And there had been no discussion between you and Mr. Powell as to estimates during that interval, as I understand it, between December 12th and December 18th?

A. I do not know whether there were or not.

Q. You do not think it was likely that there would have been such a discussion if he had not understood what you had done with respect to the estimates which he had instructed you to prepare?

A. Probably he would not have mentioned any more.

Q. The next you knew about the transaction was that you and Powell were called into conference with representatives of the Fleet Corporation in Washington on December 18th; is that correct?

A. According to the best of my recollection, yes.

Q. And that is the conference which is referred to in the letter of December 19, 1917, addressed by Mr. Powell to the Fleet Corporation, offered in evidence previously as Exhibit G-109, which appears at page 224 of the Documentary Evidence, is it? I refer to the first paragraph.

A. Yes, sir.

MR. BROWN: This is probably an appropriate place to offer that letter in evidence as Exhibit G-109. It appears at page 224 of the Concession of Documentary Evidence.

THE MASTER: It is admitted.

BY MR. BROWN:

Q. The understood purpose of that conference on December 18th with the Fleet representatives was to discuss types and sizes of ships, form of contract and estimates of costs, was it not?

A. May I see the letter?

Q. The letter of December 19th, yes.

A. Is that the one? That is the one submitting proposals, is it?

Q. That is the letter submitting proposals.

A. Now what was the question?

(Question read, as follows: "The understood purpose of that conference on December 18th with the Fleet representatives was to discuss types and sizes of ships, form of contract and estimates of costs, was it not?")

BY MR. BROWN:

Q. If I can help you on that, you know the December 13th letter was written and the parts I have quoted from that letter show that you asked the Fleet Corporation to let you know as soon as possible types and sizes so that you could submit estimates?

A. Submit a firm proposition.

Q. Now I am asking whether it was not the understood purpose of that conference of December 18th, that that was the conference at which these ships were to be discussed and estimates considered?

MR. EVANS: At the conference of December 18th?

A. Yes.

MR. EVANS: You mean the conference before that letter was written? Is that the conference you are referring to?

BY MR. BROWN:

Q. That conference was for the purpose of discussing types and sizes of ships and estimates, was it not?

MR. EVANS: You are referring to a conference that took place on December 18th, prior to the writing and receipt of the letter of December 19th?

MR. BROWN: That is right.

BY MR. BROWN:

Q. Let us pass that question. We seem to be having a good deal of difficulty about it. You were at Sparrows Point, were you not, when Mr. Powell

telephoned to you and requested you to meet him in Washington on December 18th?

A. Yes, sir.

Q. And you were at Sparrows Point in connection with some Bethlehem bids, were you not?

A. No, sir. Did you say bids or business?

Q. Well, possibly it was a misprint in the previous testimony I am not sure.

MR. EVANS: I cannot imagine what bids there would be.

A. It could not possibly have been bids. I was there on Bethlehem business.

MR. BROWN: To explain why I asked the question, it appears at page 441 of the previous testimony that he was at Sparrows Point in connection with some Bethlehem bids. I did not understand it and I was going to ask what it was about. That is probably a typographical error?

THE WITNESS: Yes, sir.

BY MR. BROWN:

Q. As I understand it, you went to Washington and met Powell at the Hotel Willard, did you not?

A. Yes, sir.

Q. Mr. Powell had just arrived in Washington from New York, had he not?

A. I do not know.

Q. He telephoned you from New York, did he not?

A. My recollection is that he telephoned me from Washington.

Q. Telephoned you from Washington?

A. That is the best of my recollection.

Q. As I understand it, when he telephoned you at Sparrows Point he told you that the Emergency Fleet Corporation were insisting upon the Bethlehem Company submitting proposals for the construction of ships, definite proposals, did he not?

A. Yes, sir.

Q. And you told him in that telephone conversation, as I understand it, that you were totally unprepared to give him prices and so forth, did you not?

A. Or words to that effect.

Q. Mr. Powell then told you that the Fleet Corporation did not want excuses, they wanted action; is that correct?

A. Yes.

Q. So you then went to Baltimore by the next train and got over to Washington?

A. I probably went to Baltimore by automobile from Sparrows Point; whichever way it was I went.

Q. So you knew, at the time of that telephone conversation, that the proposed Washington conference was for the purpose of determining upon estimates for submission to the Fleet, did you not?

A. Yes, sir.

Q. And that what Powell wanted particularly was the estimates which you had been instructed to prepare, did you not?

A. Yes, sir.

Q. And the chart had been prepared for just such an occasion as that, had it not?

A. Yes, sir.

Q. And was intended to represent estimates of cost for any size tank or cargo ship which you would be called on to build for the Fleet, was it not?

A. Yes, sir.

Q. Did Powell say anything about the chart in his telephone conversation with you?

A. No, sir.

Q. Not a word?

A. Not to the best of my recollection.

Q. Did you?

A. No, sir.

Q. When you arrived at Washington from Sparrows Point, as I understand it, Powell requested you to furnish him with cost estimates as they had been worked up by you in accordance with his instructions; is that correct?

A. I would not say it was just that way.

Q. Possibly I can refresh your recollection about that. It appears at page 442 of your testimony in the previous proceeding that you testified as follows: "Mr. Powell advised me that he wanted these costs as they had been worked up. Not having the figures or the graph with me, I had to recall it." Is that correct?

A. Yes, that is substantially correct.

Q. The chart at that time was in the Bethlehem office at Bethlehem, Pennsylvania, was it not?

A. Yes, sir.

Q. The conference with the Fleet officials on December 18th lasted several hours, did it not?

A. I do not recall how long it lasted.

Q. It lasted a considerable time, did it not? Do you remember Mr. Powell testifying that it lasted for several hours in the afternoon, at the previous hearing?

A. That is what Mr. Powell testified to, but I—

Q. You have a different recollection about it?

A. Not different. It is very hazy just how long it did last.

Q. Then on the evening following the conference, as I understand it, you and Powell discussed the provisions which were subsequently included in this proposal of December 19th, reference to as Exhibit G-109, did you not?

A. Yes, sir.

Q. Mr. Powell then left for the Harlan plant, did he not? Do you remember that?

A. I think it was the next morning he left, if my recollection is clear on it. He left and went to the Harlan plant.

Q. To refresh your recollection, Mr. Powell testified that he left Washington and went to the Harlan plant, where he dictated the letter on the following day, which would be December 19th, and that the letter was then handed by him to Messrs. Radford and Piez in Washington on December 20th. Does that coincide with your recollection about it?

A. I should say that was correct.

Q. As far as you know?

A. As far as I know, yes.

Q. Did you send for the chart when you were requested by Mr. Powell to come to Washington?

A. No, sir.

Q. Did you request anyone in Bethlehem, either by telephone or otherwise, to examine the chart and advise you as to the chart prices of the particular tank and cargo ships with respect to which you were submitting estimates?

A. No, sir.

Q. It would have been a very simple matter to do that, would it not?

A. I do not know.

Q. Let me refresh your recollection by your testimony before Mr. Roberts at page 515, where

you testified as follows: "Q. Can you think of any reason why you did not telephone to someone either at Bethlehem or Fore River, wherever your chart was kept, asking them to take the chart and either send it to you in Washington or let you know what prices represented the different types of ships? A. I do not think I could have gotten it in Washington at the time. It was sometime about noon, as I recall, when Mr. Powell called for me. Q. How long would it have taken Mr. Schulze to go wherever you wanted him to go and read off the prices that represented the different ships? A. It would not have taken very long. Q. That is exactly the information you needed to arrive at in the reconstruction you made at Washington? A. That would be probably so." Do you remember so testifying?

A. Yes.

Q. That is correct, is it not? Is not that testimony correct?

A. Yes, the testimony is correct, but is your question the same now as it was then?

Q. I am asking you whether your testimony correctly states the facts. I will first ask whether you so testified before Mr. Roberts?

A. I so testified, if it is there.

Q. When Mr. Powell asked you for the costs as they had been worked up by you, what did you tell him?

A. I told him I did not have them with me.

Q. You did not have them with you?

A. Yes.

Q. Did Mr. Powell suggest getting the chart or having the figures read from the chart by telephone?

A. No, sir.

Q. Did he make any reference to the chart?

A. I think not.

Q. You do not think there was any mention of this original chart at the time of your conference with Powell in Washington?

A. I may have gotten these two conferences confused, whether it was the one of the 12th or the one of the 18th. I know at one of them Mr. Powell was informed in reference to it. I first thought it was at this one, but it could just as well have been at another one.

BY MR. EVANS:

Q. You mean you first thought it was at the conference of December 18th?

A. Yes, sir, when I first mentioned it to him.

Q. But it is just as probable it might have been the conference of the 12th?

A. Of the 12th, December 12th. It is very difficult to carry those dates over a period of years.

BY MR. BROWN:

Q. Right on that point, you have been re-employed by Bethlehem from October, 1924, to the present time, have you not?

A. Yes, sir.

Q. For the sole purpose of preparing yourself in connection with the trial of this case; is that correct?

A. Yes.

Q. And you have reviewed all the data that relate to this case and which has been offered in evidence in the previous proceeding, with great care, have you not?

A. Before Mr. Roberts, you mean?

Q. What I am saying is that I do not want the Master to receive the impression that you are a witness on this chair who has been called after the

lapse of years without having had any previous opportunity to prepare himself for this hearing. You do not wish to give that impression, do you?

A. No, I do not.

Q. You have been employed since October or November of 1924 for the sole purpose of preparing yourself for just what you are undergoing at the present time, have you not?

A. That is so.

Q. That is correct?

A. Yes.

Q. And with the thought that this chart and its explanation is a matter of prime importance in this case; that is true, is it not?

A. No.

Q. You have not had that thought in mind?

A. No.

Q. You did not think the chart was important?

A. No.

Q. You have never thought the chart was important?

A. I did not think anybody thought it was as important as you think it is.

Q. It appears at page 248 of the testimony before Mr. Roberts which you gave at the last hearing, that you testified, in answer to the following question, as follows: "Q. You understood from the time you first knew of this case that it might become very important and that you have an explanation for the chart, did you not? A. Why, yes." You so testified, did you not?

A. Yes.

Q. So you and I both thought it was rather important, Mr. Brown?

A. Yes, but I did not think probably it was as important as you do.

Q. Yes; I understand your reasons for not thinking so. At any rate, when Powell asked you on December 18th for your estimates as they had been worked up in accordance with his instructions, you proceeded to prepare a second chart, did you not?

A. Yes.

Q. And that was at the Hotel Willard, was it not, in Washington?

A. Yes.

Q. On what sort of paper was that second chart prepared?

A. On a ruled pad.

Q. A ruled pad such as this that I have here?

A. Similar to that, yes.

Q. Indicating a foolscap scratch pad?

A. Sir?

Q. That would be considered as a foolscap scratch pad, would it not?

A. I do not know whether you would call it that or not.

Q. Never mind what we would call it. Will you show the Master just how you reconstructed that second chart in Washington?

A. (Demonstrating to the Master as requested) I do not know whether it is necessary to go through all this or not. Those lines were ruled through, forming squares.

Q. May I interrupt your labors at this point and ask, have you now prepared the background of the chart similar to that used by you in Washington?

A. Substantially so.

MR. BROWN: May I have that marked for identification just as it is, so that we may refer

to it as we go along? This might be called Government Exhibit 204 for Identification.

(The paper was so marked.)

BY MR. BROWN:

Q. Having prepared a rough chart, substantially similar to the form which has been marked as Exhibit G-204 for Identification, what did you next proceed to do?

A. I next proceeded to put a spot on the 10,000 ton mark for an East Coast tanker.

Q. Representing your estimate of cost for a tanker of 10,000 dead weight tons?

A. Yes, sir.

Q. An East Coast tanker?

A. Yes, sir.

Q. Did that represent the cost per ton?

A. No, sir—well, dividing it by the tonnage, it would.

Q. What was the spot intended to represent? The total cost?

A. The total cost.

Q. What did you next proceed to do?

A. Next proceeded to run in a line. First I think that I did this.

Q. Namely, draw a line along a straight edge?

A. A diagonal.

Q. Draw a line along a straight edge from zero to the point that you have indicated?

A. Yes. The next thing I recall doing is, knowing that vessels under 10,000 tons would cost more than those above 10,000 tons—

BY MR. EVANS:

Q. You mean cost more per ton?

A. Cost more per ton, that is, the relative cost per size, you have to get a line off somewhere like

this (indicating). You will find that this, within a range, will run pretty close to a straight line, for the purposes of illustration.

BY MR. BROWN:

Q. May I interrupt you, so that we will get this straight on the record? The line which you have drawn is a line which I ask to have marked for identification as "A". Now will you proceed?

A. After having established that line, it simply became a question—

Q. Which line is that; A?

A. This line A. Understand, I am not saying that this is the absolute line.

Q. I understand.

A. Now then, if we wanted to take off a 7500-ton boat we took the mean in between there, which is 7500 tons, and read this off down to the base line, which is cost in dollars, and it would read around $1,525,000 on this line. (Referring to base line.)

Q. So that we will not get too far afield, what I am trying to get you to do is to tell us what you did in connection with the reconstruction of this chart in Washington?

A. That is as far as I did.

Q. So, as I understand it, you prepared a second chart in Washington on the basis of a spot which you selected as representing the total cost of an East Coast tanker of 10,100 tons; is that correct?

A. 10,000 tons.

Q. And then, on the basis of your experience, you drew a line both above and below that point, which was intended to represent the cost of any East Coast tanker of any tonnage which might be required by the Fleet Corporation; is that correct?

A. Yes, sir.

MR. BROWN: I would like to have that offered in evidence.

THE MASTER: Is there any objection to the physical demonstration? It is admitted as Exhibit G-204.

BY MR. BROWN:

Q. That line representing the total cost of East Coast tankers was the only line that you constructed in connection with this second chart, was it not?

A. Yes, sir.

Q. Your estimates upon West Coast tankers and East and West Coast cargo ships were based on percentage differentials, were they not?

A. Yes, sir.

Q. Will you illustrate just how your estimate for an East Coast cargo ship of 7400 dead weight tons was determined from that chart?

A. That was taken on the line corresponding to the 7400 tons. Incidentally, we were figuring on 7500-ton tankers as well. Now we figured that the cargo vessel was 15 per cent. less in cost than a tanker of equivalent size. There wasn't any spot taken on here at all. It was merely taken off of the tanker place. They were the only sized cargo vessels, I believe, that we figured on at that time.

Q. In other words, as I understand it, in figuring on a 7400-ton East Coast cargo ship, you took the cost as shown by your line for a 7500-ton East Coast tanker, and then, based on a differential of 15 per cent., as representing your estimate as to the difference between the cost of the tanker and the cargo ship, you arrived at an estimate for the cargo ship; is that correct?

A. Yes, sir, only I cannot put the final figures in.

Q. And that differential which you used, you say, was 15 per cent.?

A. Approximately 15 per cent., as nearly as I can recall.

Q. How did you arrive at an average for the East and West Coast tankers of 10,100 dead weight tons from that chart?

A. Took the East Coast tankers and added 5 per cent. to it, and we got the West Coast—we were proposing five tankers for the West Coast and three tankers for the East Coast—we multiplied the $210 a ton dead weight, or $2,100,000, whichever you wanted to use, by the number of ships in the proposal for the West Coast and multiplied the price of the East Coast by the number of ships for the East Coast, and you divided it by the total number of ships and got at the average price.

Q. As I understand it, that spot that you plotted on this second chart for a tanker of 10,000 tons was the only spot which you plotted in connection with the construction of that second chart; is that correct?

A. To the best of my recollection, that is so. I may have had other points in mind which I do not recall, but that is an outstanding point.

Q. What other points do you think that you may have had in mind?

A. I do not know.

Q. Do you think it likely that you had any other points in mind?

A. I do not know. I may have or may not have.

Q. You testified before Mr. Roberts, did you not, that that spot was the only spot that you had in connection with the reconstruction?

A. That is the only spot I recall having.

Q. In plotting the base line on your original chart, after determining the first point representing the tanker of 9100 tons, it was necessary for you to determine another point representing the cost of another ship of a generally similar type, in order to determine the drift of the line, was it not?

A. That is very desirable to do if you have anything that can be utilized for that purpose.

Q. You so testified before Mr. Roberts, did you not?

A. Yes, sir.

Q. And you testified there that before plotting the graph it was necessary to get some other ship of a generally similar type, did you not?

A. Yes, that is right.

Q. And the other ship that you referred to there were hulls 158 and 159?

A. 158 and 159 at Sparrows Point.

Q. You also testified, did you not, that in plotting the original chart it was necessary to have a third point in constructing your base line and that the zero point had been the third point used in plotting the base line on the original chart?

A. Yes, sir.

Q. The figures which you submitted to Mr. Powell in your December 18th conference were figures which you took from this reconstructed chart, were they not?

A. The figures were included in the proposal.

Q. I am asking you whether the figures which you submitted to Mr. Powell were based on this second chart which you constructed in Washington?

A. Yes, sir.

Q. In Mr. Powell's proposal of December 19th, which has been offered in evidence as Exhibit G-109,

there was added approximately $10 per dead weight ton to the figures which you submitted to him from this second chart, was there not?

A. Yes, sir.

Q. Do you recall by what process of calculation Mr. Powell arrived at this additional allowance of approximately $10 per dead weight ton?

A. I do not.

Q. You were at the hearing before Mr. Roberts, were you not, when Mr. Powell testified that that allowance represented an allowance for trading purposes?

A. He also testified—

Q. Just a moment: were you?

A. Yes, sir.

Q. Did you hear him so testify?

A. Yes, sir.

Q. That is all I have asked you.

A. All right.

Q. Will you explain the allowance of $2.50 for extra cost of steel which appears in Exhibit G-109 at page 228 of the Concession of Documentary Evidence?

A. Prior to Bethlehem's negotiations with the Fleet Corporation for the construction of vessels, Bethlehem had made a contract covering the purchase of steel on a base price, as I recall it, of six cents a pound for structural steel, and, if my recollection is right, fifteen cents a pound for boiler steel.

Q. They were higher than the War Industry Board prices?

A. Much higher.

Q. Will you proceed with your explanation as to what this allowance was intended to represent?

A. This allowance was intended to represent the

utilization, or to cover the additional cost so that you would be enabled to use this material in the construction of the vessel bid on.

Q. In other words, as I understand it, it was intended to represent the difference between the War Industry Board prices for the quantity of steel which you were under contract to purchase at the higher prices, and the higher prices of such steel spread over the tonnage contemplated by this proposal?

A. I say, that is the theory.

Q. That is correct. In preparing this data for this proposal of December 19th, you and Mr. Powell considered it likely, did you not, that you would be called on by the Fleet Corporation to submit a breakdown showing how your estimates of cost were determined?

A. Of the December 18th?

Q. In connection with your December 19th proposal?

A. I do not think so.

Q. Did you think it was good policy to submit a breakdown purporting to show how your estimates referred to in that letter were determined?

A. Mr. Powell submitted at one time a breakdown of the thing, to which I always objected. I never approved of submitting any breakdown.

Q. Did you object to his submitting the breakdown, or did you object to the breakdown which he submitted?

A. Possibly both.

Q. Possibly both? Well, now, can you not be more helpful to us in that connection and let us know whether you discussed the breakdown with Mr. Powell and whether he then submitted a breakdown which you objected to?

A. I want to be just as helpful as I can.

Q. That is all we ask.

A. If my recollection serves me right, Mr. Powell made an arbitrary breakdown on the division between material, labor and shop expense, or plant expense, and then he added to that A. S. and G. Miscellaneous. I do not know that I agreed with Mr. Powell on that, but he probably felt that it was a desirable thing to submit to the Fleet Corporation.

Q. As explaining these prices which were submitted?

A. Yes, in accordance with his views.

Q. So that you and he did discuss a breakdown at the time of your December 18th conference, in connection with the proposal which you intended to submit to the Fleet?

A. If that breakdown was made at that time, yes.

Q. Don't you think that it is likely that you did discuss the breakdown with Mr. Powell at that time?

A. If Mr. Powell made the breakdown, yes. That is what I have said.

Q. It was discussed with Mr. Powell?

A. Yes.

Q. If there was a breakdown made in connection with your December 19th proposal, it was after a discussion between you and Mr. Powell, was it not?

A. Yes.

Q. That is correct, and it was after you both approved, was it not, of the breakdown which was submitted to the Fleet Corporation?

A. No, sir.

Q. Oh, well, then you have a clear recollection that a breakdown which was made at that time and

submitted to the Fleet was disapproved of by you; is that correct?

A. I should say it was, yes.

Q. And in what respects did you disapprove of that breakdown?

A. Well, I did not feel at that time that anybody knew enough about construction costs of any kind or any description to try to deal with it in detail.

Q. And you so advised Mr. Powell?

A. Yes, sir.

Q. But he insisted on submitting the breakdown, is that correct?

A. Yes, sir.

Q. And the breakdown appears at page 228 of the Documentary Evidence, does it not?

A. I do not know.

Q. Will you look at it and see?

A. Yes, sir.

Q. That is the breakdown which Mr. Powell insisted on submitting in spite of your objection, as I understand it?

A. Well, my dear man, my objections did not amount to very much with Mr. Powell.

Q. They did not amount to very much?

A. No.

Q. Did you think that the item for administration, selling and general expense in connection with this breakdown was excessive?

A. I could not tell.

Q. You cannot tell?

A. No.

Q. Did you think it was all right?

A. No.

Q. Did you think it was a proper figure?

A. No.

Q. What would you consider to be a proper figure?

A. I do not know.

Q. You did not?

A. No.

Q. Did you consider the item for labor and materials and operating expense to be a proper figure?

A. That I have never given a thought to. I would like to reserve that.

Q. Did you think that that was a fair split between labor and material and operating expense, and administration, selling and general expense, that one should be about ten per cent. of the other? Did that look like a fair and proper estimate to you?

A. That ten per cent. was taken, as I recall it, because prior thereto ten per cent. of the cost of the material, labor and plant expense represented the A. S. and G. and depreciation. Mr. Powell had such a figure in his mind and undoubtedly it was the breakdown that he used. Now as I recall it, I did not think it would be anything like that.

Q. You did not think Administration, Selling and General would be anything like ten per cent.?

A. No, I did not.

Q. And you so advised Mr. Powell?

A. Probably did.

Q. Did you think that his Labor, Material and Operating Expense item was about right, or did you not think that that would be anything like that either?

A. I cannot tell you now.

Q. That is an important point. It seems to me that you ought to help us as much as you can as to whether that was a proper item or whether you thought it was excessive.

A. I probably did not think that was excessive.

Q. You thought that was about right?

A. Probably that would be somewhere in line.

Q. But you thought this other item of Administration, Selling and General Expense was excessive; is that correct?

A. Yes.

Q. And notwithstanding that, Mr. Powell, as I understand it, overrode you and insisted on putting that in the estimate?

A. I do not like to have it said that my superior officer overrode me. He made the decision in the matter.

Q. Your answer, in effect, is yes, is it not?

A. In effect, yes.

Q. Did you tell Mr. Powell at that time about the breakdown which you had actually made in connection with this tanker of 9100 dead weight tons and ask him to use that breakdown instead of this breakdown in connection with the tanker of 10,000 dead weight tons?

A. No.

Q. You never told him about your breakdown in connection with the tanker of 9100 dead weight tons?

A. Oh, yes, he was told how this was made up on the 9100 tons, and I think probably, if you take the breakdown there, that you won't come awfully far from these figures here.

Q. Do you think, then, in arriving at this breakdown in the letter of December 19th, that that was really based on the breakdown that you had made with the tanker of 9100 dead weight tons?

A. That I do not recall.

Q. You do not remember whether that is true?

A. No.

Q. But you had approved of the breakdown in

connection with the tanker of 9100 dead weight tons, had you not?

A. I had what?

Q. You had approved of the breakdown which you made in connection with the tanker of 9100 tons?

A. There isn't any breakdown in this letter of a tanker of 9100 tons.

Q. In connection with your preparation of the chart?

MR. EVANS: You mean he approved his own work?

MR. BROWN: He approved his own work, right. That is exactly what I mean.

BY MR. BROWN:

Q. Did you approve it?

A. Yes.

Q. While you did not approve of this breakdown in this letter of December 19th?

A. Yes.

Q. Now I am asking you whether you suggested to Mr. Powell at that time that, if he was going to use any breakdown, he should use the breakdown which you had actually made in connection with the tanker of 9100 dead weight tons?

A. When Mr. Powell's mind is made up, it is made up, Mr. Brown, and it is no use of me or anybody else telling Mr. Powell what to do.

Q. Mr. Brown, that is all very well, but I am asking you if you did not suggest to him that, instead of using this breakdown referred to at page 228 of the Concession of Documentary Evidence, he should use the breakdown which you say you had actually made in connection with a tanker of 9100 dead weight tons?

A. I cannot recall.

Q. You cannot recall, but you think you told him all about that breakdown, so that he could have used it if he wanted to instead of this other one?

A. I told him there was a breakdown, but we did not have the breakdown there.

Q. You had certain figures showing your breakdown in Bethlehem, certainly, did you not?

A. Oh, yes.

Q. And you preserved those figures with the thought that you would probably be called on to explain your figures, either by Mr. Powell or the Fleet Corporation, did you not?

A. Not by the Fleet Corporation, no.

Q. But by Mr. Powell?

A. No, not even by Mr. Powell.

Q. Was it not important at all that you should keep this data in some way on which the chart had been prepared?

A. Mr. Brown, if this had been a—

Q. Won't you answer the question?

A. Just let me answer in my way and if it is not right you can strike the thing out. The preparation at the time that the figures were made for the 9100-ton tanker and the 10,000-ton tankers, the conditions were such that nobody could tell what anything was going to cost.

Q. Just a moment.

A. On the other hand, if you are figuring on a firm proposition—

THE MASTER: Mr. Brown, suppose you reserve your explanation and you will have a perfect right to give it afterwards.

MR. BROWN: Your own counsel will ask you the question.

BY MR. BROWN:

Q. Was the breakdown referred to in the proposal of December 19th determined from the estimates which are submitted in that letter, or were the estimates determined from the breakdown?

A. Were these figures here taken from the estimate, is that what you mean?

Q. Was the breakdown determined from the estimates or were the estimates determined from the breakdown?

A. This was determined after Mr. Powell had decided on the figures he was going to put in, in accordance with the best of my recollection.

Q. In other words, you first determined what the total cost prices would be and then made your breakdown on the basis of the prices so determined?

A. That is what I understand was done.

Q. But it is a fact, is it not, that your breakdown referred to in this proposal of December 19th is a purely arbitrary breakdown?

A. Yes, I should say so.

Q. Not based on any figuring or calculation of costs whatsoever; is that correct?

A. I should say that is substantially so.

Q. In other words, it was merely to give the appearance of support to the lump sum prices which had been already put in the letter; is that correct? That was its purpose, was it not?

A. That probably is so.

Q. And that applies to the breakdown given in connection with the 7400-ton cargo vessel which likewise appears at page 228; is that correct?

A. Yes.

Q. What became of your second chart?

A. Probably torn up and put in the waste basket after it served its purpose.

Q. Do you remember that representatives of the Fleet Corporation called a conference at Washington on January 3, 1918, for the purpose of discussing your proposal of December 19th?

A. Yes, sir.

Q. That took place on January 3, 1918?

A. Yes, sir.

Q. Do you remember who was present at that conference?

A. As far as I can recall, there was Admiral Bowles, Mr. Radford, Mr. Powell, myself, and I think Mr. Cuthell was in part of the time.

Q. He was the general counsel?

A. He was the general counsel for the Fleet Corporation. I do not recall anybody else being there.

Q. At that conference of January 3rd there was considerable controversy between Powell and Admiral Bowles with respect to the propriety of the estimate submitted in your proposal of December 19th, was there not?

A. Yes.

Q. Admiral Bowles insisted that those estimates were too high, but did not submit any figures himself?

A. That is right.

Q. That is correct?

A. Correct.

Q. And Mr. Powell argued in support of the propriety of those estimates, did he not?

A. Yes, sir.

Q. Then, at the insistence of Admiral Bowles that these prices should be lowered, although Admiral

Bowles submitted no counter figures himself, it is true that Mr. Powell made several concessions, did he not?

A. Yes, sir.

Q. And each time he made a concession Admiral Bowles still insisted that the estimates were too high, although he did not submit any counter estimates; is that correct?

A. That is substantially so.

Q. Then Mr. Powell, as I understand it, finally came down to the figures representing the amounts indicated by your chart?

A. Substantially so.

Q. And he refused to go below those figures, did he not?

A. Yes, sir.

Q. Then, as I understand it, Admiral Bowles asked you whether the amounts insisted upon by Powell represented fair and proper estimates of cost; is that correct?

A. Proper prices, I think he used.

Q. Whether they represented proper prices?

A. Yes, sir.

Q. And you assured him that they did and that they were the most accurate estimates which could be arrived at under the circumstances; is that correct?

A. I do not think I went that strong. I told him I thought they were about as accurate, as well as they could be arrived at under the circumstances. I do not think I went as far as you are saying there.

Q. You said that they were the most accurate that could be arrived at under the circumstances?

A. Most accurate? Did you say I said the most accurate?

Q. Is that what you said?

A. I do not think I said that.

Q. What did you say?

A. I said I thought they were about as accurate as could be arrived at under the circumstances, or about as good as could be arrived at, something to that effect.

Q. It appears that at page 456 of the testimony before Mr. Roberts that you stated: "So far as my personal talk in the matter, I had practically nothing to say. Mr. Powell and Admiral Bowles did the talking, and it is quite firmly planted in my mind that the only thing I had to say was that the Admiral asked me if I considered that the prices were fair. After Mr. Powell decided that he was going to go no lower, he asked me my impression, and I said they were the best prices that could be arrived at under the circumstances.

Q. That is what you told Admiral Bowles? A. Yes, sir." Is that not correct?

A. Yes.

Q. And Admiral Bowles then agreed on the amounts which were insisted on by Mr. Powell; is that correct?

A. He did not let us know he had agreed on it. The first we knew was when we received the notification of the award from Mr. Piez.

Q. It appears on page 458 of the previous testimony that referred to this conference of January 3rd you testified as follows in answer to these questions: (Incidentally, these questions were asked by Mr. Evans.) -I do not pretend to ask you to tell us literally what this man said or that man said, but it appears from the record that as a result of that conference the prices that were ultimately agreed upon

were less than the prices that you submitted in your letter of December 19th? A. Yes. Q. Was the reduction in the price something which was agreed upon at that meeting of January 3rd? A. Yes." That is correct, is it not, didn't you so testify?

A. Well they were the prices which Powell set on at that time.

Q. Now let us get the question and let us get the direct answer. I ask you if you didn't testify to that? Didn't you so testify before Mr. Roberts at the previous proceeding?

A. If it is there, Mr. Brown, I surely did.

Q. And you remember, do you not, at that previous hearing, Mr. Evans asking the following questions of Mr. Powell and Mr. Powell answering as follows at page 564: "Q. It appears from the record that you did ultimately get down to those prices (the reference is to the prices which you gave him from the chart). A. Yes, sir. Q. By what process of trading did you get down to these prices? A. By the ordinary process between businessmen trying to reach a meeting of prices and Admiral Bowles reduced the price and I made a concession. Then I made another price and so on until I finally struck at a price below which I would not go and he finally accepted. Q. You were the only one who made any concessions? A. Yes. Q. He did not stop at any figure and make any concession? A. No, the conceding was all on my part. Q. When you had been Jewed down to rock bottom prices there you stuck and Admiral Bowles finally met you? A. Yes. You remember that, don't you?

A. Yes.

BY THE MASTER:

Q. I would like to ask you whether the prices that

are referred to in Mr. Piez's letter of January 5, 1918, are the same prices as you now say were agreed to at the conference when Mr. Powell and Admiral Bowles were present?

A. That is my recollection, yes.

MR. BROWN: In that connection, Mr. Master, I call your attention to the letter to which you refer, page 259 of the record.

BY MR. BROWN:

Q. Now, prior to this January 3rd conference, you had furnished Powell with the figures taken from your original chart for each of the tankers and cargo ships covered by your December 19th proposal, had you not?

A. Yes.

Q. And Mr. Powell had determined in advance of the conference that he would not accept less than the chart prices furnished to him by you; is that correct?

A. Yes, sir.

Q. Did you ever see Mr. Piez following that conference and prior to the letter of January 5, that he wrote to the Bethlehem Company?

A. To the best of my recollection I had never been in Mr. Piez's office prior to, and I never discussed with Mr. Piez anything in connection with these contracts.

Q. You never knew of any request by Mr. Piez or Mr. Powell or anyone else that these prices named in the December 19, proposal should be reduced?

A. You mean in a conference with Mr. Piez?

Q. Did you know of any request made by Mr. Piez to any representative of the Bethlehem Company that the prices should be reduced?

A. No.

Q. At no time?

A. No.

MR. BROWN: I would like to offer a letter previously offered as Exhibit G-32, which is a letter addressed by Chauncey G. Parker to Henry P. Brown, under date of January 17, 1927, together with an enclosure there referred to and which I understand it is admitted was submitted to counsel for Bethlehem.

MR. EVANS: That is right.

THE MASTER: There being no objection it will be admitted as Exhibit G-32.

BY MR. BROWN:

Q. Were you advised about the date of this letter, which is January 17, 1927, that the Fleet Corporation has requested all figures, reports, working papers and other data used by Bethlehem in connection with its estimates for the ships in controversy?

A. Yes.

MR. BROWN: I would like to offer as Exhibit G-33 a letter which was previously offered as Exhibit G-33.

THE MASTER: There being no objection, it will be admitted as Exhibit G-33.

MR. BROWN: This is the letter addressed by Ralph B. Evans to Henry T. Brown, under date of March 22, 1927, in which, in reply to the request for cost data referred to in Exhibit G-32, it says as follows:

"Estimates of costs for contract ships. We

have and will furnish the working papers used in making these estimates, but these will not show estimates of costs in detail as requested."

BY MR. BROWN:

Q. Did you so advise counsel for Bethlehem at that time?

A. The only thing that I ever told counsel at that time that we did not have any of the original figures and all that I could give him was a re-construction.

Q. You told counsel at that time you did not have any of your original figures and all that you could give them was a re-construction; is that correct?

A. I don't know whether it was that time or not but that is the only thing I ever told them in connection with that subject.

Q. And it was prior to that time?

A. It must have been.

Q. You did certainly tell them what you had prior to January, 1927, did you not?

A. Oh, yes, sure.

Q. So far as you can recall you never told counsel for Bethlehem that you had available the working papers used in connection with your estimates. Is that correct?

A. That is correct.

MR. BROWN: I would like to get on the record, if there is no objection, that a photostatic copy of the chart which has been offered in evidence as Exhibit G-34 was submitted to Government's counsel in August, 1927 and was submitted in pursuance of Mr. Evans' letter of March 22, 1927, which has been offered in evidence as Exhibit G-33.

BY MR. BROWN:

Q. When did you first advise Bethlehem counsel as to the existence of this second chart which you say you constructed in Washington?

A. I don't recall.

Well I wouldn't be at all surprised that I did tell them right after I went back on to the case in November, 1924.

Q. It is very likely that you told Mr. Cravath's office of the second chart at that time?

A. More than likely that I did.

Q. It appears from the record of the previous proceeding before Mr. Roberts that this second chart was not referred to in your testimony which was taken on May 20 and May 22, 1929, and that you testified on May 22, that all Bethlehem's proposals had been made on the basis of the first chart. Is that correct?

A. I didn't testify to that at all. You will find that I testified there was a second chart prepared.

Q. Wait a minute. I am referring to your testimony given on May 20th and May 22nd, 1929. Of course I know that on June 10th, 1929, you were recalled by Bethlehem counsel, and then, for the first time, disclosed the existence of the second chart. Now I ask you again, isn't it a fact that at the proceeding before Mr. Roberts you testified on May 20th and May 22nd, 1929, and that no reference was made by you as to the second chart, and that on May 22nd, you testified that all Bethlehem's proposals had been made on the basis of the first chart?

A. That is probably so. Yes, I recall that the second chart did not come out until some time later. I don't recollect whether it was because I was not asked about it or why it was.

Q. The question and answer appeared on page 196 of the record, as follows, and this is on re-direct examination: "Q. I think you have already testified to that effect or else it has been admitted in evidence but I will ask you again, all the contract proposals were made on the basis of this chart that was made by you? A. They were used as the base for the proposals." And the chart that you referred to in that testimony was this first chart, was it not? Well, there had not been any reference to any other chart at that time?

A. No, there had not been.

Q. And the first reference to the second chart was on a later hearing, June 10, 1929, when you were recalled?

A. Whatever the date was.

Q. When you were recalled by Bethlehem's counsel for the principal purpose of telling about the second chart and how it had been constructed by you in Washington. That is correct, is it not?

A. I daresay it is.

Q. But you remember that testimony, don't you, Mr. Brown?

A. Well not all in detail. My goodness, there is a limit to what a man can carry. Be reasonable.

Q. Can you think of any reason, or do you know of any reason why Bethlehem failed to notify Government counsel as to the construction of the second chart prior to June 10th, 1929?

A. The only answer that I can make to that, it seems to probable, is when I went back with Bethlehem and they had an attorney from Cravath & Henderson's office; his name was Tex Moore, that is what they called him, and he was assigned to this case. He worked on it quite some time and he was

given a lot of information, a lot of data and he made a lot of memoranda and he then left the Cravath & Henderson office and the matter was taken up by Mr. Robison and there were quite long periods when nothing was done in connection with this case. Now whether I told Mr. Robison or told any of Cravath & Henderson's attorneys or Mr. Evans of the existence of this second chart I don't recall. I know I recollect telling Mr. Moore originally in reference to it.

BY THE MASTER:

Q. That is Tex Moore you are talking about?

A. Tex Moore.

BY MR. BROWN:

Q. Then it is quite possible—

MR. EVANS: What is the use of spending time on it. We knew all about the construction of this second chart.

MR. BROWN: Do you want to make a statement on the record?

MR. EVANS: If you think it is important I will.

MR. BROWN: I do not want you to put anything on the record at this time but you can do it in your own case.

MR. EVANS: I object to inquiring of this witness as to the reasons counsel may have had or the reasons for not doing this, that or the other thing in dealing with the case.

THE MASTER: The witness is obviously not competent to testify to that. He can only testify to what information he gave to those representing Bethlehem or the Government.

BY MR. BROWN:

Q. Then it is quite possible that no Bethlehem counsel other than Mr. Moore was advised as to the existence of this second chart prior to the hearing before Mr. Roberts which took place in June of 1929; is that correct?

THE MASTER: You mean by this witness. I don't want to indulge in possibilities outside of this witness. You mean is it possible he never mentioned it?

MR. BROWN: That is right.

THE WITNESS: Yes, it is possible that I never have.

BY MR. BROWN:

Q. Do you consider it likely?

A. I would hardly consider it likely.

Q. But, at any rate, you don't ever remember having discussed this second chart with any counsel representing Bethlehem prior to the hearing before Mr. Roberts in June, 1929 other than Mr. Moore?

A. That is my recollection.

BY MR. EVANS:

Q. What is your recollection?

A. That I discussed this with Mr. Moore and I don't recall discussing it with any of the other attorneys prior to the time we went on trial.

BY MR. BROWN:

Q. Prior to that hearing in June 1929?

A. Yes. It is possible it was discussed and it is possible that it was not.

Q. As far as you were concerned, after your reemployment by Bethlehem in October or November, 1924, you were prepared to furnish your explana-

tion of this first chart at any time that you might have been called on to do it, were you not?

A. I don't recall—

Q. I mean after you had had time, of course.

A. After I had had time to look into it, yes.

Q. As far as you were concerned, you were prepared to submit your explanation to anyone who might have asked for it after you had had a chance to get your figures together and see how the original chart had been prepared?

A. Yes.

Q. Were you advised that the original chart was or was to be submitted to Government's counsel without any explanation of its basis? Was that subject discussed with you in advance of submissions to Government counsel?

MR. EVANS: That is objected to.

(Objection sustained.)

MR. BROWN: I offer in evidence letter dated January 16, 1928, addressed to Ralph B. Evans by Joseph J. Brown, previously offered as Exhibit G-35.

THE MASTER: There being no objection it is admitted as Exhibit G-35.

MR. BROWN: I would like to read that letter into the record:

"Several months ago you furnished us with a diagram or chart which I understand was represented by you to be the only working paper used by Bethlehem in making its various estimates of cost for the contract ships involved in the above controversy.

Since then, as you know, I have on several occasions endeavored to ascertain whether or not Bethlehem would be willing to furnish us with an explanation of the manner in which this diagram or chart had been used in making the estimates in question as well as an explanation of the following notation thereon: 'June—1922'.

Will you please advise us as to Bethlehem's final position with respect to this explanation."

I offer in evidence letter dated January 18th, 1928, addressed by Ralph B. Evans to Joseph J. Brown, previously offered in evidence as Exhibit G-36.

THE MASTER: There being no objection it is admitted as Exhibit G-36.

MR. BROWN: Reading as follows:

"I have your letter in which you ask whether we would be willing to furnish you with an explanation of the diagram or chart used in making up the estimates for the original contract ships.

As I have told you, this chart was made up by Harry Brown, who was at the time technical manager of Bethlehem Shipbuilding Corporation, and had previously been vice-president of the Fore River Shipbuilding Co., and its successor, the Fore Shipbuilding Corporation. Whatever working papers he had in making up his figures have been destroyed, and even if they were in existence would probably be unintelligible to anyone but himself. Therefore your request amounts in

substance to a request that we furnish you in advance of the trial with a statement of what Mr. Brown will testify to. In my experience this is rather an unusual request, but I am quite willing to furnish you a copy of his statement as given to us on condition that you will agree that this is to be considered as a document produced at the call of the other side, and that in the event Mr. Brown is unavailable as a witness at the trial, his statement may be offered in evidence by either party as an explanation of the chart, with the same effect as if it were a part of the chart itself."

I offer in evidence as Exhibit G-174 a letter previously offered as Exhibit G-174 being a letter addressed under date of June 29, 1928, to Joseph J. Brown by Ralph B. Evans.

THE MASTER: There being no objection the letter is admitted as Exhibit G-174.

MR. BROWN: Reading as follows: "I am handing you herewith this statement in explanation of the graph or chart which was the basis of the estimates of cost on the contract ships.

I am furnishing this in the hope that it may facilitate your work of preparation and more narrowly define the issue on the allegation of fraud.

It is understood that this paper is not to be used by either of us as substantive evidence, although you are at liberty to use it in cross-examination of Mr. Brown to the same extent as you might use a signed statement for that purpose.

It is also understood that you are to furnish me, reasonably in advance of the hearing, a memorandum of your expert's comments or criticism of Mr. Brown's estimate and that this memorandum will be as full and as explicit as the memorandum which I am enclosing you."

I agree, on behalf of the Government, that prior to this letter we had refused to accept Mr. Brown's explanation on the basis referred to in Mr. Evans's letter which has been offered in evidence as Exhibit G-36.

Mr. Evans, have you any objection to my offering in evidence the Exhibit which accompanied your letter referred to as Exhibit G-174?

MR. EVANS: No.

MR. BROWN: I then offer in evidence a statement or explanation referred to in Exhibit G-174, which statement or explanation was offered in the previous proceeding as Exhibit G-154.

THE MASTER: It is admitted as Exhibit G-154.

MR. BROWN: Mr. Evans, have you any objection to my offering in evidence a statement dictated by you, under date of June 22, 1928, offered in the previous proceeding as Exhibit G-155?

MR. EVANS: No, if you make a proper explanation of what it is and the circumstances under which it was given to you.

MR. BROWN: Perhaps you better give that. I don't want to run counter to any agreement on this subject. I make the offer.

THE MASTER: Without any explanation?

MR. BROWN: With the thought that Mr. Evans better make the explanation.

MR. EVANS: The explanation is that this is a memorandum which I dictated and gave to Mr. Brown, giving him my understanding of the explanation of G-34½ a photostat copy of which I had given him previously.

MR. BROWN: Is that your explanation?

MR. EVANS: Yes.

MR. BROWN: I thought possibly you cared to say on what basis that understanding was based?

MR. EVANS: What do you mean by that?

MR. BROWN: I think the document should not just be left in space as a possible guess by you as to the methods employed by Mr. Brown, because it was my clear understanding at the time this was prepared, and if I remember you referred to a memorandum submitted to you at the time by Mr. Brown.

MR. EVANS: That is right, submitted to me by Cravath's office.

MR. BROWN: Then we can add to Mr. Evans's explanation, I trust, that Exhibit G-155 was based on information supplied by Mr. Cravath's office.

BY MR. BROWN:

Q. As I understand it, after the preparation of the original chart, you kept none of the working papers or data employed in its preparation; is that correct?

A. No, they were not kept.

Q. So that whatever the working papers or data may have been, they were never used by you subsequent to the preparation of the original chart; is that correct?

A. That is correct.

Q. And the chart constitutes the sole record of the estimates made by you; is that correct?

A. That is right.

Q. And in the absence of information or particular cost facts and allowances used in connection with the preparation of this first chart it would have been impossible for anyone to fully understand the chart, would it not?

A. They would understand the chart readily enough but they would not understand the preparation of the chart.

Q. They would not understand the basis of the preparation?

A. That is right.

Q. Then even you could not understand how you arrived at the chart prices unless you determined in some manner the particular cost factors and allowances used in connection with its preparation?

A. That is correct.

Q. You left Bethlehem employment in June, 1922, did you not?

A. Yes, sir.

Q. And then you were re-employed, as I understand it, about November, 1924, for the purpose of

assisting then in connection with the trial of these cases?

A. That is right.

Q. Now after your re-employment by Bethlehem in the latter part of 1924, as I understand it, you got from the accounting and purchasing departments of Bethlehem, such information as was then available in order to enable you to determine the manner in which your original chart has been prepared; is that correct?

A. Not the manner in which it had been prepared, but the factors in developing it.

Q. In order to determine the basis on which you had prepared the original chart?

A. Yes, the basis.

Q. And at that time, as I understand it, you had none of the original cost data available which you had used in connection with the original construction of the chart?

A. That is right.

Q. Now, as I understand it, in connection with your work in the explanation of the chart after your re-employment in 1924, you ascertained from the Accounting or Estimate Departments of Bethlehem the total returned cost of Job 12 materials for Hull 253, did you not?

A. Not having any such information available, it was necessary for me to get it from the Accounting Department.

Q. And likewise, with respect to the returned cost for materials of Hull 158?

A. Yes.

Q. You likewise ascertained at that time, from the Accounting or Purchasing Departments, the total returned cost of all materials for Hull 253?

A. Yes.

Q. And the same thing in connection with Hull 158 and Hull 159?

A. Yes.

Q. And you also again ascertained from the Accounting or Purchasing Departments the average delivered base prices of the plates in Job 12 for Hull 253?

A. Yes.

Q. And then you ascertained from the Purchasing Department the cost of certain items of materials other than Job 12 in connection with Hull 253?

A. Yes.

Q. In order to determine your factor of increase with respect to materials outside of Job 12?

A. Other than Job 12.

Q. And you also ascertained the cost of similar materials as of December 1917; is that correct?

A. Yes, about November 1917, or whatever the month was.

Q. November or December of 1917?

A. November, I guess it was.

Q. And you likewise ascertained the average hourly earnings of direct labor for Hull 253? That, as I understand it, was not one of the things which you remembered but which you had to obtain from the Accounting or Purchasing Department?

A. No, some of the factors were pretty clear in my mind to use.

Q. May I interrupt you. I am endeavoring to state now the thing you did not remember as distinguished from certain factors or percentages which you did remember, and isn't it a fact that you

had to ascertain the average hourly earnings of direct labor in connection with Hull 253?

A. I did not use the hours of labor.

Q. The average hourly earnings, you didn't use that?

A. We used the average hourly earnings but not the hours of labor. There is merely a direct ratio of one to the other.

Q. That was a slip of mine. You did have to ascertain the average hourly earnings and direct labor for Hull 253; is that correct?

A. Well that had been established some time previous.

Q. You mean to say that when you came back and made up your explanation that you did not have to obtain information as to the average hourly earnings of direct labor in connection with Hull 253?

A. I did have to get it but I didn't just recall exactly what the figures were.

Q. And you had to ascertain the total cost of direct labor in connection with Hull 253?

A. Yes.

Q. And likewise the total returned cost of labor for Hulls 158 and 159?

A. Yes.

Q. Now the balance of the figures and factors referred to in your explanation of this first chart, as I understand it, were based upon memory. Can you think of anything else that you had to obtain? I think I have covered everything?

A. I should say largely upon memory. They were all pretty much round figures.

Q. Did you keep any data showing how you arrived at the factor of 1.75 in connection with your work after your re-employment by Bethlehem?

A. No, I didn't.

Q. And that was based on a comparison of the cost of certain materials outside of Job 12 in November, 1917 as compared with the cost of similar materials in connection with Hull 253; is that correct?

A. And also taking into consideration the manufactured products that you could not get any comparison on.

Q. I am talking about your work after your reemployment in the latter part of 1924.

A. Well so am I. We got as much of a proportion of the stuff as we could but the factor of increase on the outside material, that was difficult to remember. My recollection is that there were certain things that stood out, such as 50 cents an hour.

Q. But the basis of determining the factor 1.75 was what I have suggested, was it not?

A. Yes.

Q. By comparison of these prices?

A. Yes.

Q. And that comparison was based on certain principal items of material, was it not?

A. Well they were used to form the judgment but I couldn't say that we just simply took pig iron and copper and paint and oils and coal and all sorts of things just at that time and then said that showed a 75 per cent. increase, because there are so many other articles that entered into it.

Q. But the basis of your explanation, was it not, was a comparison of cost data furnished to you by the Accounting Department, showing the cost of certain items of materials as of November 1917, as compared with the cost of similar materials in connection with Hull 253?

A. Yes, wherever it could be possible to obtain it.

Q. Why didn't you keep that data in order to substantiate your present position with respect to this factor of 1.75 and show us exactly what materials were used and how you arrived at that factor of 1.75?

A. Well that is very difficult to give you.

Q. At any rate you haven't kept such data?

A. No, I have not.

MR. BROWN: I would like to offer in evidence a letter referred to in the previous hearing as Exhibit G-176.

THE MASTER: There being no objection, it is admitted as Exhibit G-176.

MR. BROWN: Being a letter dated September 21, 1928, addressed by Ralph H. Hallett to Ralph B. Evans. With the Master's permission I will read only the last paragraph of that letter, while offering the whole of it. "It is also requested that we be given as far as possible a list of the items, with their prices, considered by Mr. Brown in arriving at his factor of increase for material other than that covered by Job 12".

BY MR. BROWN:

Q. Were you advised that such a request had been made?

A. I presume that I was.

MR. BROWN: I offer in evidence Exhibit G-177, being a letter dated September 25, 1928, addressed to Mr. Evans by Mr. W. E. Robison.

THE MASTER: There being no objection it is admitted as Exhibit G-177.

MR. BROWN: A copy of this was submitted to counsel for the Government. With the Master's permission I will read only the first and last paragraphs.

The first paragraph reads:

"The following is in reply to inquiries and requests for additional information contained in letters from Mr. Joseph J. Brown to you dated September 7, 1928 and September 21, 1928, copies of which you sent me on the same dates."

And the last paragraph reads:

"Request for list of items, with their prices, considered by Mr. Brown in arriving at his factor of increase for material other than that covered by Job 12."

"No record of such items and prices has been preserved."

THE MASTER: I note in the opening paragraph which refers to a letter of September 21, 1928, from Joseph J. Brown. That must mean the letter from Ralph H. Hallett?

MR. BROWN: There is no doubt about it.

THE MASTER: There is no letter that you wrote at the same time?

MR. BROWN: No, sir.

BY THE MASTER:

Q. I am curious, if I may interject a question here—in your description of the first chart that we have here before us, as I recall it, you took an arbi-

trary percentage of 30 per cent. for inefficiency in labor, as I recollect?

A. Yes.

Q. When you came to re-construct this chart without that original data before you, did you attempt to verify that factor of 30 per cent. for inefficiency of labor by experience or did you just arbitrarily take the same factor?

A. Took the same factor.

Q. Do you happen to know as a matter of fact how near that factor was in actual experience? Did anybody ever attempt to get that figure up?

A. Yes. Take the first ships built under the contracts, the loss by inefficiency was very much higher than 30 per cent. but as your work went along and the Armistice was signed your factor for inefficiency increased. In other words the last ship labor rate was higher but cost less money than the first ship.

Q. Did that ever get below 30 per cent.?

A. Yes, your last ship got down about as efficient on labor as before the war.

Q. But that was not true until after the Armistice?

A. No, sir.

BY MR. EVANS:

Q. These last ships were finished when?

A. 1920.

BY THE MASTER:

Q. But, as a matter of fact, the re-construction figures used for the explanation of the preparation of this chart took into consideration the same factor of 30 per cent. as you had used originally?

A. Oh yes, and that 30 per cent. was only arrived at after thorough discussion with the man-

agers of the plants. That was not a thing that was just picked out of the air.

Q. No, I understood you in your testimony earlier in the day, you said that was not your own guess but rather that it was the result of discussion with others?

A. Yes, sir.

BY MR. BROWN:

Q. So, as I understand it, on the first of the contract ships that were completed your factor of anticipated increase, your factor represented anticipated increase in the inefficiency of labor, was actually exceeded in connection with those ships; is that correct?

A. I wouldn't say that.

Q. I thought you had said it?

A. No. What I said was is whether it is the particular contract ships or ships built subsequent to the ones we selected for the purpose, exceeded the 30 per cent., ships which were under construction but not completed. Now I think I would be perfectly safe in saying that you would see an increase in efficiency all the way down at all the plants.

Q. An increase in efficiency?

A. An increase in labor efficiency.

Q. When you were re-employed in the latter part of 1924 how did you determine the average hourly earnings under the Boston Navy Yard scale in connection with your work?

A. We used a round figure of 50 cents an hour and that seemed to stick in my head.

Q. That stuck in your memory?

A. Yes.

Q. As I understand it this 10 percent. allowance referred to in your explanation in connection with

a tanker of 9100 tons represented an allowance of approximately $70,000, for war zone requirements and $15,000. for hotel equipment and navigating outfit; is that correct?

A. That is correct.

Q. So that the balance would be the allowance for the extraordinary contingencies, is that correct?

A. Yes, sir.

MR. BROWN: I offer in evidence letter previously offered as Exhibit G-21.

THE MASTER: There being no objection it is admitted as Exhibit G-21.

MR. BROWN: Addressed to Ralph B. Evans, under date of July 6th, 1928, by Joseph J. Brown. With the permission of the Master I will read only certain parts relating to this present question:

"In pursuance of our conversation with you of yesterday, the Government would like to have the following information if Bethlehem is willing to furnish the same at this time:

"5. Brown's estimate as to the total cost of armed guard equipment and war zone requirements to be furnished for tankers of 9100 and 14950 d. w. t., as well as the respective costs of labor and materials in connection therewith.

6. Brown's estimate as to the respective costs of hotel equipment and navigation outfit to be furnished for the tankers of 9100 and 14950 d. w. t.

7. Brown's estimate as to the cost of 'other

contingencies" relating to the construction of tankers of 9100 and 14950 d. w. t.

8. The nature of the 'other contingencies' included in Brown's estimate with respect to these ships.

9. Explanation of the discrepancy between Brown's estimate as to the cost of all materials required for the construction of a tanker of 9100 d. w. t. and the actual cost of such materials with respect to Hulls 1376 to 1381, inclusive."

BY MR. BROWN:

Q. Were you so advised that such a request had been made?

A. I suppose so.

MR. BROWN: I offer in evidence letter referred to in the previous proceeding as Exhibit G-22.

THE MASTER: There being no objection it is admitted as Exhibit G-22.

MR. BROWN: Which is a letter addressed to Benjamin B. Frick by W. W. Robison, and with the permission of the Master I will read only parts of the letter:

"With further reference to Mr. Brown's letter to Mr. Evans of July 6, requesting certain information, I send you

"Referring to items 5, 6, 7 and 8 of Mr. Brown's letter of July 6, I would say that we are advised that no separate estimates were made of the cost of armed guard equipment, war zone requirements, hotel equipment, navi-

gation outfit or other contingencies, but that the cost of these was lumped in the ten per cent (10%) allowance mentioned in previous information furnished to Mr. Brown.

With reference to Mr. Brown's request in item 9 of his letter for 'explanation of the discrepancy between Brown's estimate as to the cost of all material required for the construction of the tanker of 9100 d. w. t. and the actual cost of such materials with respect to hulls 1376 to 1381, inclusive', we do not think that we should be asked to furnish information of this character or that it is information which will be of any assistance to Mr. Brown in the preparation of his case, particularly in view of the fact that if any explanation of any such discrepancy becomes material, it will be so as a matter to be proved as a part of our case rather than as any part of the Government's case."

BY MR. BROWN:

Q. Prior to the time of your re-employment at the end of 1924, had any representative of Bethlehem ever requested you to explain the basis of the estimates that you had submitted to the Fleet Corporation?

A. I don't recall it.

Q. As far as you can recall no representative of Bethlehem, subsequent to the time of the consummation of these contracts and prior to the time of your re-employment in the month of November, 1924, had ever displayed any interest whatsoever in the estimates which you submitted or on the question as to the basis of such estimates, so far as you know?

A. So far as I know.

Q. And, so far as you know, during that period

no representative of Bethlehem knew the basis of the estimates which had been submitted to the Fleet Corporation; is that correct?

A. Correct.

MR. EVANS: Are you talking about counsel now, or Mr. Powell?

MR. BROWN: Well, make it all inclusive?

MR. EVANS: Was your answer directed to that?

THE MASTER: I am not sure that the witness understood the question.

MR. BROWN: This is during the period between the consummation of the contracts and his re-employment in 1924. I don't know whether Mr. Evans understood the question.

MR. EVANS: Of course the consummation of the contract is also rather a vague term.

THE WITNESS: Do you mean the completion of the contracts?

MR. BROWN: Execution of the contracts is what I had in mind.

THE WITNESS: I thought you meant upon the completion of the contracts or during some period when they tried to effect a settlement between the two parties, after that had started.

MR. BROWN: I don't get that.

THE WITNESS: I thought that you meant was there anybody came to me to ask in reference to these matters during a period when they tried to effect a settlement of the contract.

BY MR. BROWN:

Q. Suppose we direct the question at the present

time to that. Did anyone representing the Bethlehem Company come to you during that period and ask you as to the basis of your estimates?

A. No.

Q. And the controversy that you refer to was the controversy between representatives of Bethlehem and representatives of the Fleet Corporation with respect to base rates applicable to these contracts, was it not?

A. I don't know what it was.

Q. You remember the controversy that was taken in hand by the Wage Reimbursement Committee of the Shipping Board?

A. No, I don't know anything about the conference except on one occasion when I conveyed a message from the Union Plant to a man down there but I had nothing to do with the labor or wage situation. That was out of my department altogether.

Q. So that prior to the time you left Bethlehem you had no knowledge of any controversy which may have then existed between representatives of the Fleet Corporation and representatives of Bethlehem with respect to the wage rates applicable to these contracts in controversy?

A. I knew nothing about it.

Q. To make my previous question clear, do I understand that from the time of the execution of the contracts in controversy until subsequent to your re-employment in Bethlehem at the end of 1924, that no inquiry was made of you by any representative of Bethlehem as to the basis of these estimates which had been submitted to the Fleet?

MR. EVANS: There again your question is hardly intelligible. Contracts were executed

at various times. Extending over what period of time?

BY MR. BROWN:

Q. Do you understand the question?

A. Well I had just the same mind with Mr. Evans that the contracts extended over some time, from in December they carried along through quite a few months.

Q. We will say from January 3rd?

A. And I will answer it this way, Mr. Brown, and it may be satisfactory to you and may be perfectly clear, that after the prices had been established for the first vessels of the various sizes, I can say with quite assuredness that nobody had asked me anything in reference to them, if that is what you mean.

Q. Until after your reemployment by Bethlehem in 1924?

A. Yes.

Q. Since your re-employment in 1924 your headquarters has been in New York, has it not?

A. For the first period I would say extending over probably four months or three months, I was at Bethlehem, at the main office.

Q. In New York or in Bethlehem?

A. No, in Bethlehem.

Q. And after that time have you been at their headquarters in New York off and on?

A. Yes.

Q. Mr. Powell has been located in New York since he left Bethlehem, has he not? That has been his headquarters, has it not?

A. No, not since he left Bethlehem.

Q. Where has his headquarters been?

A. He was in Boston quite a long period before going to New York.

Q. His business headquarters were in New York, were they not?

A. No, he was in Boston for quite a long time.

Q. It has been in New York for the last several years, has it not?

A. I don't know.

Q. After your re-employment in November of 1924, and prior to the hearing before Mr. Roberts, did you ever have any discussions with Mr. Powell relating to the present litigation?

A. No.

Q. No discussions whatsoever?

A. No.

Q. You never took up the question of this chart with him or the basis of the chart or had any talk or correspondence with respect to the estimates which he and you had submitted to the Fleet Corporation?

A. No discussion.

Q. Well, what did you have?

A. The only thing that I can recall having is that I showed Mr. Powell the chart and asked him if he remembered it and he said he did not. He said he remembered a chart but he thought the curves ran the other way.

Q. When did you show him the chart?

A. Oh, that is some time between 1924 and before the hearing before Mr. Roberts.

Q. You showed Mr. Powell the chart?

A. Yes.

Q. Where was that?

A. In New York.

Q. In whose office?

A. In my office.

Q. Where was your office?

A. 25 Broadway, 15th floor.

Q. Is that the Bethlehem office?

A. That is the Bethlehem office in New York.

Q. Where was Mr. Powell's office at that time?

A. I don't know.

Q. How did you get in touch with him?

A. He sometimes dropped in to see me.

Q. He sometimes dropped in to see you?

A. Yes.

Q. Then you have seen him on some occasions during this period?

A. Yes, I have seen him.

Q. That is the only occasion that you ever discussed this case with him?

A. I wouldn't say that I discussed it with him at any time.

Q. In other words on these occasions when he did come in to see you you never brought up the question of this case or its preparation?

A. I told you I brought it up and showed him the chart.

Q. Except on this one occasion?

A. That is the only time he saw the chart and that is the only recollection I have of taking the thing up seriously with him.

Q. The chart was in your office at that time when he came in?

A. Yes.

Q. Do you recall whether it was a conference arranged by you for the purpose of discussing the chart or whether he just happened to come in the office?

A. My recollection is he just happened to come in.

Q. And you produced the chart?

A. Yes.

Q. And asked him if he remembered the chart?

A. Yes.

Q. And he said he did not remember anything about it?

A. Yes.

Q. And did you attempt to refresh his recollection by explaining to him that it was a chart which you had prepared in accordance with his instructions to prepare yourself for this Fleet program, or that you had prepared it in the manner that you are now explaining to us?

A. I don't think we went into any such detail, no.

Q. When you asked him if he remembered it and he said no you then dropped the subject and put the chart away?

A. That is probably what happened.

Q. As soon as you found out that he had no memory on the chart you dropped it?

MR. EVANS: Objected to. He didn't say he had no memory.

BY MR. BROWN:

Q. After you showed the chart to Mr. Powell you asked him if he remembered it and he said no, and as I understand it you dropped the subject?

A. As far as I can recall that is about as far as it went.

Q. How long before the hearing before Mr. Roberts did that conference take place?

A. I don't know.

Q. Do you recall when Mr. Powell testified in a hearing before Mr. Roberts that he had no discussion of that chart with you or its explanation at any time that he could remember before that hearing and

that he never could remember discussing it with you?

A. I don't recall that. He said he never saw the chart.

Q. Could you tell us whether it was one, two or three years before the hearing before Mr. Roberts?

A. No, I couldn't tell you.

Q. Was it before you prepared this explanation which has been offered in evidence as Exhibit G-154? Was it before you had prepared any written explanation as to the basis of the chart?

A. No, it was after that.

Q. Then you probably showed him that explanation, did you not?

A. I doubt it. I may have but I doubt if I showed it to him.

Q. And that is all the discussion, so far as you remember, that you have had with Mr. Powell on the subject of this chart during the period that we have mentioned?

A. On this chart, yes.

Q. Or on the subject of the basis of the estimates?

A. Or on the subject of the basis of the estimates.

(Adjourned to 10 o'clock A. M. March 31, 1931.)

HARRY BROWN, examination resumed.

BY MR. BROWN:

Q. As I understand it, after establishing the two spots on your original chart for tankers of 9100

dead weight tons and 14,950 dead weight tons, it was a simple matter to plot the balance of your lines on the chart?

A. Comparatively simple, yes.

Q. A comparatively simple matter, and, as I understand it, the East Coast tanker total cost line was drawn along the edge of a baton, which was held in place by ducks at two spots, representing estimates for tankers of 9100 and 14,950 dead weight tons; is that correct?

A. There may have been an additional duck along the line below it, just running it around just with your eye, or you may run a straight edge down through there, then fair it into your zero.

Q. But it is your recollection that that line was drawn along the edge of a baton held in place by ducks at the two spots that I have mentioned.

A. Yes.

MR. BROWN: I think this would be an appropriate place to offer in evidence a baton and duck for the information of the Master.

The Exhibits offered were admitted in evidence, the baton being designated Exhibit G-182 and the duck Exhibit G-183.

BY MR. BROWN:

Q. Likewise, as I understand it, the East Coast cargo total cost line was drawn along the edge of a baton held in place in two spots, representing your estimates for cargo ships of 10,000 and 15,000 dead weight tons; is that correct?

A. The original line was put in for it, yes.

Q. Won't you answer the question, whether it was drawn that way or not?

A. Yes.

Q. The answer is yes?

A. Yes.

Q. And the West Coast tanker and cargo total cost lines, as I understand, were also drawn along the edge of a baton as in the case of the other lines?

A. Yes.

Q. As I understand it, the spot on the 9100-ton line, which is designated with the capital letters F. R., was intended to represent the price of $1,865,000, which was the base price agreed on for ships of that tonnage which were subsequently included in the Fore River Contract 183, was it not?

MR. EVANS: That is objected to. I have allowed the Government to cross examine this witness because I thought it would be a saving of time, but when we get into the question of what certain spots on that chart are intended to represent, I think Mr. Brown should conduct his examination with due consideration of the fact that Mr. Brown is called as his witness, and that he be not permitted to put answers in the witness's mouth.

MR. BROWN: I do not know whether you gentlemen have made up your minds on that or not, but I certainly think by this time I have a right to cross examine this witness, as it is fully understood by everybody that he is a hostile witness. He is the man that we charge primarily with having committed this fraud on the Government. It is understood by everybody and he is a witness that it was necessary for us to call, because until we showed the basis of the estimates as described by them, we were not in

position to say whether the method they employed was proper or improper.

THE MASTER: Up to now, so far as this hearing is concerned, Mr. Brown has been quite frank in his answers to your questions and I have not seen any evidence yet of a desire not to give you what you are asking. As I understand it, all Mr. Evans' objection relates to is the form of your question, and it may be that it would be helpful all along in getting a more direct and comprehensive answer if you would simply direct your questions to the subject matter and let Mr. Brown answer. If he shows that he is trying to evade your question you will get the benefit of that impression on the Master. I think we will all get along more easily in that way until he proves to be hostile. The moment he does, we will meet that situation when it arises.

MR. BROWN: That is perfectly acceptable.

BY MR. BROWN:

Q. Referring to the spot which appears on the chart on the 9100-ton line, which is enclosed in a circle and which is designated with the capitals F. R., I ask you what that spot was intended to represent?

A. That spot was intended to represent the result of the estimates which I had prepared for the duplication of the 9100-ton tank vessel.

Q. I ask you whether in your previous testimony before Mr. Roberts you did not testify that that spot was intended to represent the contract price of an East Coast tanker of 9100 tons which was subsequently included in Contract 183; did you not so testify?

A. That it was the contract price?

Q. That that spot was put on as intended to represent the contract price of a tanker of 9100 tons dead weight subsequently included in Contract 183?

A. No.

Q. You never so testified?

A. No.

Q. Is it not a fact that you testified before Mr. Roberts, as appears at pages 206 and 207 of the transcript, as follows: "A. Now wait a minute, wait a minute. After getting this off here and they decided to build 7500-ton tankers at the Harlan & Hollingsworth plant, that was spotted on there as tankers were built there. The same way we have this (indicating) was put on here at the Fore River price and here is the S. P., which is taken there as the Sparrows Point plant." You so testified, did you not?

A. That is substantially right, but it is awfully confused.

Q. The spot that you referred to as indicating the Fore River price was the spot that we are talking about on the 9100-ton line, was it not?

A. That was a base price.

Q. Was not that the spot you were referring to in that testimony?

A. I dare say it was.

Q. And then your testimony goes on as follows: "Q. Just a minute. This Fore River spot at the 9100-ton mark— A. That is right. Q. As I understand now was put on after you made your contract for the construction of those ships; is that right? A. Very likely, yes." You so testified, did you not?

A. Yes.

Q. All right, then, it appears from that testimony, as I understand it, that that spot on the

9100-ton line designated F. R. was put on the chart subsequent to its preparation as indicating the price agreed upon in Contract 183; is that correct?

A. The F. R. was probably put on later, but not the spot.

Q. Oh, the spot was not put on later?

A. No. That was the spot we used in connection with the preparation of the chart.

Q. You have said that you testified to the contrary in the testimony before Mr. Roberts. Will you explain which testimony you now say is correct?

A. It is unquestionable we figured out—

Q. I will read you again what you said before Mr. Roberts, so that there will be no doubt about it. "Q. Just a minute. This Fore River spot at the 9100-ton mark— A. That is right. Q. As I understand now was put on after you made your contract for the construction of those ships; is that right? A. Very likely, yes." Did you so testify?

MR. EVANS: Would you read the next question and answer?

BY MR. BROWN:

Q. Did you so testify?

A. If you have it there, I dare say that I did. I do not think it is clear.

Q. You do not think it is correct?

A. I say, I do not think it is clear.

Q. Will you say definitely whether that spot was put on the chart before or after its construction?

A. I should say that the spot was put on at the 9100 tons for the use of constructing the chart.

Q. That spot was put on in constructing the chart, as I understand it?

A. Yes, and the spot was put at 9100 tons.

Q. And was not put on subsequent to the preparation of the chart?

A. Yes.

Q. You feel quite sure of that?

A. I feel quite sure that that is so.

THE MASTER: There is a difference, as I understand it, between the letters F. R. and the spot referred to?

MR. BROWN: I want to know when the spot was put on the chart.

THE MASTER: When you use the word "spot", you mean the spot and not the letters?

MR. BROWN: In referring to the spot I mean the spot which is enclosed in the circle, which is indicated by the letters F. R.

BY MR. BROWN:

Q. And you so understand, Mr. Brown, do you not, in your testimony, that when I referred to the spot I meant that spot?

A. Well, at that time my recollection—

Q. Won't you answer yes or no, whether that was your understanding in the testimony that you have given, that I am referring to the spot which is enclosed in the circle?

A. You are now referring to the spot that is enclosed in the circle and I so understand at the present time.

Q. And you have so understood in your previous testimony?

A. Well, in the previous testimony there was a lot of talk made in reference to the F. R.'s and S. P.'s and the spots and so forth, and it is quite possible that that may have been confused, but to

have it straight, the spot that you refer to was put on for the purpose of constructing the curve.

Q. And was not put on subsequent to the preparation of the chart?

A. I won't say there was not a tick mark or something of that sort put on subsequent to it.

Q. The spot we are talking about, you say, was not put on subsequent to the preparation of the chart; is that correct? Will you answer that question?

A. Yes, to the best of my belief.

Q. Was that spot to which we have been referring placed on the chart at the same time that the spot was put on the 9100 per ton line for an East Coast tanker?

A. No, that was a development from this line (indicating), and that must have been put on there afterwards.

Q. In other words, you say that the spot which I am indicating, which appears on the East Coast tanker line, on the 9100-ton line, indicating the per ton cost of a 9100-ton East Coast tanker, was put on the chart subsequent to its preparation?

A. No, it was a part of its preparation.

Q. Then it was put on the chart as a part of its preparation?

A. Yes.

Q. Very well. Prior to the preparation of this chart, of course, you had a great many years experience in drawing charts and different graphs used in your engineering work?

A. Yes, sir.

Q. And it is common engineering practice, is it not, in connection with such charts, to enclose im-

portant dots in a circle, and occasionally put a tick at the top of the circle or at one side of the circle?

A. Not necessarily, no.

Q. Is not that common practice?

A. Sometimes it is done, sometimes it is not.

Q. You would not say that it was not common engineering practice, in drawing such charts as this, that when you have an important spot you would earmark it, as it were, by enclosing it in some kind of a circle or with a tick on it?

A. It depends upon what the chart was prepared for and how accurate the chart was supposed to be. But even at that, some people will enclose it with a circle, some will not. Some will put a little tick mark off on the side of it and some will just put a pencil point on, which might be obliterated when the line is drawn through it.

Q. Will you explain what the spots appearing on the East Coast cargo total cost line at the 3000, 7000, 9000, 10,000, 12,000, 14,000, 16,000 and 18,000 per ton lines, which are enclosed in circles, were intended to represent?

A. Yes. Do I have to answer that just absolutely, or can I go back into the preparation?

Q. I would rather you would answer it directly.

A. Do I know what they represent?

Q. Yes.

A. Yes, I do.

Q. What do they represent?

A. They represent the total cost taken from the dead weight curve at those different tonnages.

Q. And why are they enclosed in circles?

A. No specific reason for it.

Q. Did you testify as follows, with respect to those spots that I have mentioned, in the previous

proceeding (p. 222): "Q. Now will you, showing you the original chart Exhibit G-34½, will you explain what the marks or spots enclosed in circles and appearing at the 7000-ton and the 9000-ton and the 10,000-ton and the 12,000-ton lines represent? A. Well, they may have been in connection with the development of this line here or this one (indicating), all through here. I cannot tell you just exactly when those things were put on." Did you so testify?

A. That is probably right.

Q. And in stating that they may have been put on in connection with the development "of this line here," you were referring to the total cost East Coast cargo line, were you not?

A. I presume that is so.

Q. And the explanation which you have just made with respect to those dots, as having been taken from the East Coast cargo line, was not made in the previous proceeding; is that correct? In other words, this is the first time that you have made any such explanation of those spots?

MR. EVANS: He just said so. In the answer that you read he says so, as I understand. He said 'They may have been in connection with the development of this line here or this one (indicating), all through here."

MR. BROWN: We are not speaking of the same thing.

MR. EVANS: I do not know how anybody can tell.

MR. WOOD: What answer are you referring to?

BY MR. BROWN:

Q. We will try it again. I ask you whether this

morning is not the first time that you have testified in this proceeding that the spots to which I have referred, appearing on the East Coast cargo line, were taken from the cost per ton East Coast cargo line?

A. Yes, sir, that is right.

Q. Then there are certain other spots, are there not, on the East Coast cargo line, certain spots which are not enclosed in circles?

A. You can tell as well as I can, Mr. Brown. Yes.

Q. Were those spots likewise plotted in connection with the original development of that line?

A. The original line as put on that chart for the cargo vessels?

MR. BROWN: Will you read the question? I think that is fair.

(Question read).

A. I should say of the line as it now appears upon the chart, yes.

Q. None of those spots indicated on the East Coast cargo line represent the cost of any ships in connection with which Bethlehem was submitting estimates, do they?

A. No.

Q. I ask you if you did not testify as follows before Mr. Roberts at pages 238 and 239 of the testimony: "Q. You cannot give us any reason why that originally—why that East Coast cargo line is apparently a line which was constructed after considerable thought, shown by the character of the line, its heaviness at certain points, as the original base line of the chart? A. Well, it was not the original base line of the chart. Q. It was not the original base line of the chart? A. I am absolutely, definitely

positive of it. Q. But you cannot tell us why the line which you say was the base line for this chart, being the tanker East Coast line, is a thin line which is apparently constructed without any difficulty along the edge of the baton? A. That is quite right. Q. And although the cargo East Coast line was plotted from two points determined from that base line, you cannot tell us why it has the appearance of being a heavily constructed line, constructed after considerable thought and several attempts to reach a proper line? A. Oh, no, I cannot tell you that. Q. Cannot tell us how that happens? A. Oh, no". You so testified?

A. I did.

Q. I think you have already testified, although I am not clear, that the zero point was used as one of the points in constructing your base line on the original chart?

A. Yes, sir.

Q. You have noted, no doubt, the erasures which appear on the chart extending from the lower left hand corner of the chart to the upper right hand corner of the chart, in connection with the total cost work, have you not?

A. You have reference to those lines? (Indicating on positive print)

Q. If you will refer to the other chart (negative print), I think it shows up much more distinctly.

A. You mean those on the upper right hand corner?

Q. Yes.

A. What was the question?

Q. They are the erasures, as I say, which extend from the zero point on the chart parallel, more or less, with the East Coast cargo total cost line all the

way along that line and flaring off into at least five erased lines at the upper right hand corner of the chart. You have noted those lines, have you not?

A. Yes, I have noted them.

Q. And those lines were made and erased by you, were they not?

A. Yes.

Q. Will you tell us what the occasion was for your making those lines which were subsequently erased?

A. My recollection of making the upper lines—and I do not admit they were carried down to the zero point—they were made subsequent to the completion of the chart for the purpose for which it was intended, and it is not definitely clear in my mind why they would be there, because no person of experience in ship costs of any kind or description would ever run a line like that up through there, and it could only have been in discussion with somebody, or, what might happen, if their ideas had been followed in what the relation of the costs might be; but they certainly were not a part of the original chart.

Q. Is that the only explanation you have as to the occasion for putting those lines on and erasing them?

A. That is all that I can think of. There is no other purpose of those lines because they are so far out of line that no man of experience would consider such a thing.

Q. Can you tell us about when those lines were put on and erased?

A. No, I cannot.

BY MR. EVANS:

Q. Are you talking about the lines in the upper right hand corner?

A. Yes, that he is talking about there.

BY MR. BROWN:

Q. No, let us make clear what we are talking about. I think I have already indicated, but I will indicate it again, I am talking about the erased lines which run from the lower left hand corner of the chart, marked zero, more or less paralleling the East Coast cargo lir the entire length of that line throughout its center part, branching off somewhere near the 11,000 or 12,000-ton lines into at least five separate erased lines.

MR. EVANS: You are calling his attention to lines that, as far as I can see, do not exist.

MR. BROWN: I have understood we were talking about those lines.

MR. EVANS: What you say is a line. The witness's answer was directed to some lines that appear there in the upper right hand corner.

MR. BROWN: Mr. Evans, you can get the witness to adopt your theory, if you like.

MR. EVANS: No, I only want the witness to have the privilege of answering the question that he understands and the Master understands.

MR. BROWN: Very well, we will go over it again.

BY MR. BROWN:

Q. Have you not understood, in your testimony which you have just given, that I have been referring to the lines which start at the lower left hand corner of the chart, the erased lines, and run

more or less parallel with the East Coast cargo total cost line throughout its length, branching off at the eleven or twelve thousand ton lines into at least five separate lines which have been erased?

A. But, Mr. Brown, they do not—

Q. Won't you answer that question, whether you understood that?

A. No, I did not. I understood you to have reference to the lines that appear above.

BY MR. EVANS:

Q. In the upper right hand corner?

A. In the upper right hand corner, because those lines do not continue on to the lower part of the chart.

BY MR. BROWN:

Q. Do you say that the lines which I have been referring to do not continue throughout the length of the East Coast cargo total cost line?

A. Yes.

Q. Do you say now that none of these erased lines which appear above the 12,000-ton line were carried along the entire length of the East Coast cargo line?

A. With the possible exception of that line there (indicating).

Q. You indicate the erased line which is nearest to the final East Coast cargo line?

A. Yes; that may possibly have been on there.

Q. You say with the possible exception of that one line, none of these other lines were carried along the length of that East Coast cargo line to the zero point?

A. Yes.

Q. Do you likewise say that there has been but

one preliminary line, as it were, between the zero point and the 11,000-ton line?

A. Only one line.

Q. Only one preliminary line, which was erased by you?

A. No, there may have been others?

Q. There may have been others?

A. Yes.

Q. How many do you think there were?

A. There may have been two.

Q. You think there may have been two?

A. Yes.

Q. In other words, two preliminary lines which were afterwards erased by you?

A. Probably.

Q. And they were connected, were they not, with the erased lines which appear above the eleven or twelve thousand ton lines?

A. No, sir, they had no connection with those lines.

Q. In other words, as I understand it, you think that you probably drew the ends of these erased lines, but did not connect them in the middle; is that correct?

A. Very likely.

Q. At page 230 of your testimony before Mr. Roberts did you not testify as follows with respect to those erased lines: "Q. And can you tell us why there have been erasures at the top of the East Coast cargo total cost line which are barely discernible on the original chart? A. I have a very hazy recollection of that, but they came in some time later, and we had some argument, I think, Mr. Powell and myself, about the probable cost of ships, or the trend of cost of ships, in excess of the 14,000 tons or 12,

000 tons, ships which got beyond the physical capacity of the plant to handle, and my contention was these lines would run in off through here and if not through here (indicating). It was a question of just roughing some lines in through there in a matter of discussion. Q. Now just as a matter of discussion? A. That is what I would say." Did you so testify?

A. Yes, sir.

Q. And that, according to your present recollection, is an explanation of those lines, is it not?

A. About as well as you can give one.

Q. Have you discussed the matter with Mr. Powell since the previous hearing before Mr. Roberts?

A. No.

Q. You have not asked him if that was his recollection about those lines?

A. No.

Q. Why was it that you think that you may have been interested in the probable cost of ships which were beyond the physical capacity of your plants to handle?

A. There was a period after the Armistice when the Shipping Board was considering the construction of very much larger ships than had then been contracted for, in connection with the development of the Merchant Marine.

Q. What was the size of those ships?

A. They were talking, as I remember it, around 18,000-ton ships.

Q. And your chart already ran up to the 20,000-ton figure, did it not?

A. Something of that kind.

Q. What kind of ships were these that you think you may have had in mind?

A. I did not have any ships in mind.

Q. Were they tankers or cargo ships?

A. No, cargo ships.

Q. They were cargo ships?

A. Yes, sir, Mr. Robert Hague, my recollection is, was at the head of that committee that was investigating and recommending.

Q. Mr. Robert who?

A. Hague.

Q. Then, as I understand it, according to the best of your recollection, there was some occasion when you got out this chart in conversation with Mr. Powell and said to Mr. Powell that, according to your ideas, the cost of these ships which were beyond the physical capacity of Bethlehem's plants to handle, would be indicated by a curve which you then proceeded to draw on the chart and erase; is that correct?

A. That I do not want to answer, because the recollection on that thing is extremely hazy. I know there was some talk about it, but I cannot give you anything really definite in the matter.

Q. I am just trying to account for the number of the preliminary lines, Mr. Brown, and I am asking you if it is your recollection that you got this chart out, in the course of conversation with Mr. Powell about these ships that were beyond the capacity of your plants to handle, and said that according to your ideas the probable cost of these ships would be indicated by a line which you then proceeded to draw?

A. I merely say that is a probable situation. I would not say probable; I will change that to a possible situation.

Q. Then, as I understand it, it is possible

that, having so indicated your ideas, you came to the conclusion that probably that line was not correct and then you proceeded to rub it out and draw another line; is that correct?

A. I do not know.

Q. And so on with respect to all five lines; is that correct?

A. I do not know.

Q. Do you think it is probable?

A. I do not know.

Q. Do you remember what part Mr. Powell played in that discussion?

A. I do not.

Q. In fact, you do not remember anything about it?

A. I do not remember about it.

Q. As a matter of fact, you do not remember any such discussion, do you?

A. Not definitely, no, I told you before.

Q. In other words, you could not say whether such a discussion took place or not; is that correct?

A. Yes, sir.

Q. And you heard Mr. Powell say at the last hearing that he had no recollection of any such discussion, did you not?

A. Yes.

Q. And you think Mr. Powell is probably right about that, do you not?

A. I do not know.

Q. Not having any recollection of the discussion, as I understand it, you could not possibly say on what analysis of costs, if any, or on what basis, those preliminary lines were drawn by you, could you?

A. At the top, you have reference to now.

Q. Well, we will say the top lines, yes, the top erased lines.

A. From the indication there, there wasn't any figures made on the thing at all, it was just a rough, freehand sweeping.

Q. No figures at all, and not remembering the discussion you could not say whether you had in mind lump sum prices or half sayings contracts, I suppose?

A. No.

Q. You could not say; is that correct?

A. That is correct.

Q. As a matter of fact, the erased lines to which we have been referring were plotted in connection with your original development of the East Coast cargo total cost line, were they not?

A. The erased lines to which you are now referring at the top?

Q. At the top.

A. No, they were not.

Q. They were not? You are definitely sure of that?

A. That they were not utilized in the preparation of the line that now appears there.

Q. I now ask you if you did not testify to this effect before Mr. Roberts at page 234 of the previous transcript: "Q. And you cannot say definitely that those lines, as I understand it, were put on at the time of your original preparation of the chart or subsequent to it? A. I do not know. Q. You do not know? A. No." Did you so testify?

A. That is right.

Q. And that testimony referred to the erased lines which we have been discussing, did it not?

A. The lines at the top.

Q. The erased lines at the top of the chart?

A. Yes, that is my understanding.

Q. That testimony is correct, is it not?

A. I should say so.

Q. Now will you please note the erasures which run from the lower right hand corner of the chart more or less paralleling the East Coast cargo per ton line, throughout its length, gradually branching off towards the top of the chart into certain preliminary erased lines?

A. I so noticed them.

Q. You see them, do you?

A. Yes, I see them.

Q. Those lines were also put on and erased by you, were they not?

A. Yes, sir.

Q. What was the occasion for making those erased per ton lines?

A. This line extending from here down (indicating the per ton dead weight cargo), approximately running from the 10,000-ton line down, was a development originally of a line—or was a development after the per dead weight ton line of the tankers was indicated. It was taken on a ratio of cost with the tankers at the 15,000-ton, at the 10,000-ton and at the 5000. Now whether they are the particular points I had in mind I am not prepared to say, but I mean to say that it is a continuing increase in difference in cost between the cargo boats and the tankers, the smaller cargo boats having a larger differential than the larger cargo boats. That line was put off in through here (indicating). Then from your experience they ran in some other curves, that line did not appear to be exactly right.

BY MR. EVANS:

Q. You mean now the cost per dead weight ton?

A. The cost per dead weight ton, this line coming off in through here (indicating).

Q. Which is another erased line?

A. Which is another erased line, but I do not think it connects into that line (indicating). I cannot see anything connecting into it, but possibly if it did that may have been another trial point. So that you have then, off in through here, practically a compromise line, which was the final production of that line, the total cost of the cargo vessel. They may originally have drawn off in through here, gotten the point of the differential, the two points, and just run back through there as a rough line to start out with.

BY MR. BROWN:

Q. Without reference to the chart, will you please give us an explanation to clarify just why those preliminary per ton lines were put on the chart, why the preliminary erased lines were plotted on the chart? Please do not refer to the chart. We want to get an explanation that is understandable without necessarily referring to the chart.

A. Yes, because we are taking in round figures on an increase in cost per dead weight ton, or total cost of vessel, as the size decreased.

Q. That is the only explanation as to why those lines were put on the chart?

A. The inside line.

Q. They represented preliminary per ton estimates, did they not?

A. Yes, sir.

Q. For the East Coast cargo ships?

A. Yes, sir.

Q. And they were plotted by you in connection with the original development of that line, were they not?

A. Yes.

Q. At the time you prepared the chart, in other words?

A. Yes.

BY MR. EVANS:

Q. Just to make it clear, you are speaking now of the erased lines on the cost per dead weight ton which appear in the lower right hand corner of the chart?

A. Yes.

Q. You are not referring to the erased lines on the cost per dead weight ton which appear at the upper part of the chart, above 10,000?

A. I was not talking about the total cost, I was talking about the dead weight ton line.

BY MR. BROWN:

Q. Were you not talking about the erased line which runs throughout the length of the East Coast cargo per ton line?

A. No, I am talking about these lines which you referred to.

Q. You were talking about the erased lines, as I understand it, which are below the 10,000-ton line; is that correct?

A. Which I refer to as dead weight tons.

Q. You were talking about the erased per ton lines which appear below the 10,000-ton line?

A. Yes.

Q. And what is your explanation as to why those lines were originally plotted on the chart?

A. We took off the 15,000-ton, drawing upon my recollection, that a cargo vessel of that size would

cost approximately ten pen cent. less than a tanker of equivalent size. We took off the 10,000-ton that it would cost approximately fifteen per cent. less than a tanker of that size. Five thousand tons, we took it at approximately twenty per cent. So from the dead weight line you have got an increasing difference between the tanker and the cargo vessel as your dead weight decreased. That is the way the line was started.

Q. Now what is your explanation for the preliminary erased per ton lines appearing above the 10,000-ton line?

A. As an indication to that line here and that line here you may add one here (indicating), just spotting off on the dead weight line what that would be, but they are absolutely meaningless.

Q. They are absolutely what?

A. They are absolutely meaningless, could not have had anything to do with the development of the chart for useful purposes.

Q. In other words, as I understand you to testify, those preliminary cost per ton lines which were plotted on the chart and erased by you were probably put on to correspond with the preliminary total cost lines which likewise appear above the 11,000-ton line on the chart?

A. Not preliminary.

MR. EVANS: If the Master please, I object to the use of the words "preliminary line." Mr. Brown (the witness) in referring to these particular lines said that they were not preliminary lines and had nothing to do with the preparation of the chart, were put on for an entirely different purpose. It is confusing to

read into the record the words "preliminary line."

MR. BROWN: I have no objection to leaving out the word "preliminary."

(Question read in the following form: "Q. In other words, as I understand you to testify, those cost per ton lines which were plotted on the chart and erased by you were probably put on to correspond with the total cost lines which likewise appear above the 11,000-ton line on the chart?").

A. I do not know whether they correspond with those lines or not.

BY MR. BROWN:

Q. Possibly I did not understand your testimony. I thought that you stated that that was why those erased per ton lines were plotted on the chart, in other words, to correspond with the erased total cost lines that we have been referring to.

A. They show what the general trend of it would be, but I do not know whether if you divide them out they would fit or not.

Q. In other words, you are not sure why those erased per ton lines were plotted on the chart, referring to the erasures above the 10,000-ton line?

A. That is right.

Q. You have really no idea at the present time as to why those lines were ever put on the chart, or as to when they were put on the chart?

A. No, I have not.

Q. Is it not a fact that the only explanation that you can think of at the present time is that those erased per ton lines appearing above the 10,000-ton

line were put on in connection with the original development of the East Coast cargo per ton line?

A. They were not put on in connection with the development of that line.

Q. Now I ask you if you did not testify as follows at the hearing before Mr. Roberts, referring to page 236 of the testimony: "Q. As I understand it, you have no explanation as to why there were three lines drawn as extensions of the cost per ton cargo East Coast line which were subsequently erased? A. Only in the adjustment of the curves when they were originally made. Now you take this—Q. You do not know why those lines—A. No. Q. Were originally put on the chart? A. No, except in the development of it." Did you so testify?

A. I probably did.

Q. And that is correct, is it not?

A. The testimony is probably correct.

Q. Did you not also testify as follows at pages 237 and 238 of the testimony: "Q. In other words, as I understand it, those extensions to the cost per ton cargo East Coast line were probably lines that were put on there in the development of this chart? A. No, they were probably put on there afterwards. Q. They were probably put on there afterwards? A. Yes. Q. Although you cannot remember when they were put on? A. No. Q. Or why they were put on? A. Absolutely not. Q. And you cannot remember, as you cannot remember that, how it is that those three lines which have been put on as extensions to the cost per ton cargo East Coast line happen to coincide exactly with the three extensions of the total cost cargo East Coast line that are nearest to the final cargo East Coast line?

A. Well, that may be. Q. But you cannot tell us how? A. No." You so testified, did you not?

A. I testified that way.

Q. You do not think that those East Coast cargo erasures represented lines that you put on in the course of some conversation that you may have had with Mr. Powell?

MR. EVANS: Which erasures are you referring to, please?

(At the request of Mr. Brown, the question was read.)

BY MR. EVANS:

Q. Do you know what erasures he is talking about? I confess I do not.

A. What I had in mind is the erasures above the 11,000-ton line.

BY MR. BROWN:

Q. Confine your answer to that, then.

A. I stated several times I did not know, but that may be a possible explanation of it.

Q. Did you ever discuss the matter with Mr. Powell to find whether there had been such a conversation?

A. No.

Q. You never took the matter up with him?

A. No.

Q. Either before or after the hearing before Mr. Roberts; is that correct?

A. Correct.

Q. And if there was such a discussion, it has completely escaped your mind, has it not?

A. Yes.

Q. As I understand it, from the time this chart

was originally prepared it has remained in your custody, has it not?

A. Until it was surrendered at the meeting before Mr. Roberts, yes.

Q. That is correct; up until the time of the hearing before Mr. Roberts?

A. Yes.

BY THE MASTER:

Q. Where was the chart between the time that you left the Bethlehem and the time of your re-employment in 1924?

A. In a private file that I had at home.

Q. You had that at your own home?

A. Yes, sir. I might make that a little clearer. These file cases were in a storage warehouse part of the time, but they were still in my possession.

Q. They were not in the control or under the handling of the Bethlehem officers at all?

A. That is right.

BY MR. BROWN:

Q. You say that in preparing the chart, the estimate that you made for an East Coast tanker of 14,950 dead weight tons was $2,736,000, did you not?

A. That is what it works out on the formula I gave, or the figures. That is what I said. If that is the figure, my answer would be yes.

Q. (Showing witness Exhibit G-154). Is that correct, Mr. Brown?

A. Yes.

MR. BROWN: I would like to offer Exhibit previously introduced as Exhibit G-6, which appears at page 578 of the Documentary Evidence, which is a statement furnished to Government counsel by Bethlehem in pursuance of a request

by Government counsel purporting to show general characteristics, dates of keel laying, etc., with respect to various ships delivered during the calendar year 1917.

I offer in evidence a statement furnished by Bethlehem to Government counsel on request, relating to costs with respect to hulls 4158 and 4159, which are the ships referred to in this proceeding as hulls 158 and 159, which was previously offered as Exhibit G-26.

Exhibits offered admitted in evidence and marked respectively Exhibits G-6 and G-26.

MR. BROWN: According to Exhibit G-6, the return cost of material in connection with hulls 158 and 159 was $1,125,024.26, making a total material cost for each of those ships in the amount of $562,512. That is correct, is it not?

MR. WOOD: That seems to be one half the figure you named last.

MR. BROWN: That is right. According to Exhibit G-26, furnished by Bethlehem, the total cost of Job 12 materials for the two ships was $534,402.86, one half of which is approximately $267,000, which represents the cost of Job 12 materials for each of hulls 158 and 159. That is correct, is it not, Mr. Wood?

MR. WOOD: I have not figured it. It is all in the exhibit. It is a matter of mathematics.

BY MR. BROWN:

Q. Deducting the cost of Job 12 materials from the total cost of materials as shown by Exhibit G-6

leaves a balance of $295,512, as representing the cost of the balance of the materials for each of hulls 158 and 159. You have followed that so far, have you not, Mr. Brown?

A. Yes, sir, I have followed it.

Q. According to Exhibit G-6, the return cost of labor for both of these ships was $902,056.91, one half of which, applicable to each of these ships, is $451,000, representing the return cost of labor for each of hulls 158 and 159. You have followed that, have you not, thus far?

A. Yes.

Q. Now I ask you whether, applying the factors which you say you applied with respect to hull 253 in making up this chart, and which you say you likewise applied with respect to hulls 158 and 159, to the cost which we have just explained, and adding an allowance of ten per cent. as you allowed in connection with your explanation, would not your total have been $2,683,619, in round numbers, instead of the $2,736,000 which you say you figured in connection with your preparation of the chart?

A. That would be correct. May I ask the Master a question?

THE MASTER: Yes.

THE WITNESS: I am taking that they have multiplied these things out by the factor and this is the result that they got. I have not multiplied the thing out and checked that figure as being the actual figure. I know that it is going to be less and I know the reason for it.

BY MR. EVANS:

Q. But you are taking their mathematics?

A. Yes.

THE MASTER: The Master understands that the witness, in giving his answer, is not assuming the responsibility for the mathematical calculations, but, assuming the formulas to be used as he understands you are using them, he accepts this result as bringing what you say the result is, and he says that it is less than the other figure and that there is a reason for it.

BY MR. BROWN:

Q. With respect to the spot which appears on your original chart and which is supposed to represent the cost of an East Coast tanker of 14,950 dead weight tons, I ask whether you testified as follows in the previous hearing at pages 512 and 513 of the record: "Q. You do not think it is possible, according to your recollection, that no spot existed on this chart for the 14,950-ton tanker at the time you were in Washington participating in these conferences? Mr. Evans: What conferences do you mean and what chart? The Witness: What chart? By Mr. Brown: Q. On the chart that has been offered in evidence as Exhibit G-34½. A. I don't know. You sometimes may prepare a chart, Mr. Brown, without having a spot at the top point. You put your baton through it and draw around the zero and draw up to it. Mr. Evans: I think the witness was talking about one chart and you were talking about another. By Mr. Brown: Q. What I have been suggesting is the possibility that the spot which now appears on the chart which has been offered in evidence as Exhibit G-34½ at the 14,950-ton line was not on the chart at the time he participated in the Washington conferences in December, 1917. A. Well, just what I explained, plot-

ting a curve off there, you have your figures and you may not even put spots on your chart. Q. So it is quite possible that the spot which now appears at the 14,950-ton line was not on the line at the time you participated in the Washington conferences, more specifically the December 19th conference? A. It may have been and it may not have been." You so testified, did you not?

A. Yes, sir.

Q. And that is correct, is it not?

A. Yes, sir.

Q. You had been all through the negotiations, as I understand it, with the Navy Department Destroyer contracts resulting in the contract of December 6th, 1917, had you not?

A. Yes, sir.

Q. And you had likewise been all through the arrival at the base prices and estimated costs in connection with those contracts, had you not?

A. Yes.

Q. Those negotiations had been conducted by Mr. Powell and yourself on behalf of Bethlehem, had they not?

A. Yes, sir.

Q. And, as I understand it, the Half-Savings form of contract was originated by Mr. Powell in the course of his negotiations with the Navy Department relating to these Destroyer contracts and was adopted by the Navy Department at his suggestion, was it not?

A. Yes, Mr. Powell did suggest that form of contract, to the best of my recollection.

Q. Just to refresh your recollection, he said in the previous trial that that thought came in his mind

on his way to Boston, that he involved the idea of the Half-Savings contract?

A. Yes.

Q. You remember him so testifying?

A. Yes, sir.

Q. It was fully understood by all parties participating in these negotiations relating to the contracts in controversy that the principal purposes and objects of the Half-Savings form of contract proposed to and adopted by the Fleet Corporation were the same as with respect to the Half-Savings form adopted in the Destroyer contracts of December 6th, was it not?

MR. EVANS: Objected to as calling for a conclusion.

THE MASTER: I think that is hardly a proper question for the witness to answer, and it cannot amount to anything if he did answer.

BY MR. BROWN:

Q. Was it understood by you that the principles and purposes of the Half-Savings contract adopted by the Navy were the same in connection with the Destroyer contracts as in the case of the Fleet contracts in controversy?

MR. EVANS: Objected to, because what his understanding may have been is immaterial. The question is what the contracts say.

BY MR. BROWN:

Q. You took part in the negotiations with the Navy Department resulting in the adoption of the Half-Savings form of contract, did you not?

A. Yes, sir.

Q. And the same reasons were advanced by Mr. Powell to the Navy officials in favor of the adoption

of these contracts that were afterwards advanced to the Fleet representatives in connection with the contracts in controversy, were they not?

A. I don't know.

Q. You don't know?

A. No.

Q. Although you participated in the negotiations relating now only to the Destroyer contracts but also to the Fleet contracts?

A. Well there was much of the negotiations of the details of the contracts that were handled directly by Mr. Powell with Mr. Piez and me not being there.

Q. When you say that Mr. Piez participated in the negotiations, are you speaking of something with which you yourself are familiar or something you were told by somebody else?

A. Well I know that Mr. Powell and Mr. Piez had a number of talks in relation to these contracts.

Q. Were you present at these talks?

A. I was not.

Q. Mr. Powell told you that he had had such talks?

A. Why he told me that he had been to see Mr. Piez.

Q. How do you know Mr. Powell had had a number of talks with Mr. Piez relating to these contracts?

A. Because he told me that he had been to see Mr. Piez.

Q. Because Mr. Powell told you so?

A. Yes.

Q. And you participated in the December 19 conference and the January 3rd conference relating to the Fleet contracts, did you not?

A. Yes.

Q. And you know that right up to the time of the final agreement on prices, or at least up to and during the January 3rd conference, that Admiral Bowles was strongly opposed to the Half-Savings form of contract?

A. He was.

Q. And he was insisting upon the adoption of a lump sum form of contract?

A. He was.

Q. And Mr. Powell was arguing very strongly in favor of the Half-Savings form of contract, was he not?

A. I don't recall how much argument was advanced on it but Mr. Powell stood for the Half-Savings form of contract and Mr. Bowles stood for the lump-sum form of contract.

Q. Didn't Mr. Powell explain the advantages to the Fleet Corporation of the adoption of the Half-Savings form of contract?

A. I don't recall the details but it is natural to assume he presented his side of the argument.

Q. Is there any reason for you to suppose that the reasons for the adoption of the Half-Savings form of contract by the Fleet Corporation were different from the reasons advanced to the Navy Officials for the adoption of that form of contract for the Destroyers?

MR. EVANS: Objected to.

THE MASTER: The objection is sustained. If that becomes important it seems to me you ought to have available to testify the persons who were present at the time these negotiations took place.

MR. BROWN: Mr. Brown says he was present.

THE MASTER: I understood he was not. To the extent Mr. Brown was present at these conferences he can relate what each side said in reference to their relative points of view.

BY MR. BROWN:

Q. You were still in Bethlehem's employment at the time of this controversy with the Navy Department relating to the modification of the Destroyer contracts, were you not? Those contracts of December 6th, 1917?

A. Yes, I think I was.

Q. I show you a letter addressed to the Secretary of the Navy by E. G. Grace, President of Bethlehem Shipbuilding Corporation, Limited, under date of June 8th, 1921, offered at the previous proceeding as Exhibit B-5, and ask you if you were consulted by Mr. Grace in connection with the preparation of that letter?

A. I was not.

Q. You are familiar with the letter to which we refer?

A. I am not.

Q. Possibly your answer is a little premature. I show you the letter.

A. No, I could tell you pretty well I don't think that I had anything to do with it. So far as I know I never had anything to do with that letter.

Q. As far as you can recall did Mr. Grace ever consult you with respect to the presentation of Bethlehem's position to the Secretary of the Navy?

A. No, sir.

Q. Did he ever consult you with respect to the

basis of the estimates which you had submitted to the Fleet Corporation?

A. No, sir.

Q. At any time?

A. At any time.

Q. Did Mr. Schwab ever consult you with respect to such estimates?

A. No, sir.

Q. Can you tell the basis, insofar as you know, of the statements made by Mr. Grace in paragraphs 18 and 19 of that letter which has been referred to as Exhibit B-5; in other words, where he obtained the information on the basis of which such statements were made?

A. I don't know.

Q. You would not know?

A. No.

MR. EVANS: He said he did not know.

BY MR. BROWN:

Q. But you are sure that he did not obtain any information from you relating to the subject matter of these paragraphs 18 and 19 which I have shown you?

A. That is right.

Q. Do you remember that Mr. Powell had left Bethlehem's employment about the close of the year 1920?

A. I do.

Q. Will you tell us whether your estimates for the Destroyers included in the contracts of December 6th, 1917, were based upon the actual cost to Bethlehem, of Destroyers which you had previously built at your Fore River plant, corrected as nearly as possible to that date for material and wage in-

creases that had been made since such Destroyers had been completed?

A. We had prepared an estimate.

Q. Is that a correct statement?

A. Substantially so.

Q. Will you tell us whether or not you told Mr. Powell that you thought he was crazy in believing that there would be any savings against the base prices finally agreed upon in connection with the Fleet contracts?

A. My recollection is that I did tell him something of that kind.

BY THE MASTER:

Q. When was that?

A. The time we were preparing the proposals for the Fleet Corporation.

BY MR. BROWN:

Q. In other words, you felt at that time that even by good luck and good management, as I understand it, there was no possible saving against the base prices which were finally agreed upon; is that correct?

A. No, I wouldn't say so.

MR. BROWN: I offer in evidence letter of December 14, 1917, addressed by Powell to the Emergency Fleet Corporation previously offered as Exhibit G-107, which appears at page 216 of the Documentary Evidence.

THE MASTER: There being no objection it is admitted as G-107.

BY MR. BROWN:

Q. That letter, which has been offered in evidence as Exhibit G-107, refers to the Union Stock ships, Hull Nos. 150, 151, 153 and 170, and Spar-

rows Point stock ship Hull 176, and also refers to conferences which took place on December 12th and 13th, 1917, between representatives of the Emergency Fleet Corporation and of the Bethlehem Company on the subject of the completion of these ships?

A. Yes, sir.

Q. Do you remember such conference?

A. In general, yes.

Q. Would you care to see the letter?

A. If you will permit me.

Q. You have had an opportunity to read that letter?

A. Yes, sir.

Q. The Union stock ships referred to in that letter were ships which Bethlehem had started before the requisition of August 1917, were they not?

A. Yes, sir.

Q. And they were being built in a new plant, were they not, called the Alameda Plant, which was a part of the Union Plant in San Francisco?

A. This had been a plant taken over by Union and then extended.

Q. And the extensions were very substantial, were they not, as far as costs were concerned, were they not?

A. Yes, quite.

Q. Now they were built in a labor and material market that had increased the cost of construction at least 50 per cent. beyond the cost of a normal market, would you not say, approximately that, without trying to pin you down, the extensions to the plant?

A. I should say that probably might be so. I don't know.

Q. Well, would you say that the Alameda works

of the Union Plant at which these ships were being built in December of 1917 was a new plant?

A. My recollection is that it was not an entirely new plant.

Q. In other words, it was an old plant, taken over from what company?

A. I don't know.

Q. Then all that Bethlehem did was to make extensions to the plant?

A. Well, I don't know anything about the plant.

Q. As I understand it, with respect to these Union stock ships referred to in the letter of December 14th, Exhibit G-107, Admiral Bowles proposed a lump sum price of $180 per ton, did he not?

A. Yes, sir.

Q. And that price was not acceptable to Bethlehem, as I understand it?

A. That is right.

Q. And that was a lump-sum price which the Admiral offered, was it not?

A. Yes, sir.

Q. What were the reasons given to the Fleet Corporation for the rejection of that lump-sum price of $180 a ton?

A. Well, the conference that I had with Admiral Bowles, when he mentioned to me that he was going to order us to take these ships at $180 a ton, my reply to him was that I felt he was making a big mistake, that you didn't know what they were going to cost; they might cost much more than that or might cost less than that, and then there was some mention about this $205 a ton, and then there was mention about that even at that figure you don't know how you are going to come out; that it would need to be a safe figuring—the materials for the ships had been largely contracted for and delivered, and there

would be no doubt that you could make some profit on it, but Union having made large expenditures at this plant, they expected to get these ships out and get a good profit out of them and help liquidate the expenditures that they made in view of the fact that the Government had taken over the complete output of the plant.

Q. In other words, as I understand it, it was explained to Admiral Bowles that these ships had been undertaken by the Union Company before requisition order of August 3rd, and that all risks due to unforeseen conditions had been assumed by Bethlehem in belief that if the ships could be offered for short delivery they would sell at a price which would net a very large profit, and that conditions indicated that this could have been done had it not been for the requisition order, and you also explained that due to the excessive cost of the extensions to the Alameda works, because they had been constructed in a labor and material market that had very greatly increased the cost of construction, that you thought your lump-sum price at $205 was justified. Was that correct?

A. That was Mr. Powell's thought in the matter, yes.

Q. That was Mr. Powell's thought?

A. Yes, sir.

Q. Well, you agreed to that, did you not?

A. I may have had to agree to it. He may have said that is what he was going to do.

Q. At any rate those were the reasons he gave Admiral Bowles?

A. As expressed in that letter.

Q. For justifying the $205 per ton price?

A. That would be indicated by the letter you have read.

Q. Aside from the letter, isn't that your recollection as to the reasons which were given by Mr. Powell to Admiral Bowles for this price of $205 per dead weight ton?

A. I don't think Mr. Powell ever gave Admiral Bowles any reason, because we had a conference down there, Mr. Powell, Mr. Bowles and myself, and didn't get anywhere with it and we went out and Admiral Harris was there at the time and Admiral Harris took me back to Admiral Bowles and told me we would have to settle the matter, and I told you about what happened between Admiral Bowles and myself, and Mr. Powell probably had this matter up with Admiral Harris or with Mr. Piez.

Q. It is a fact, is it not, that the $180 a ton lump-sum price suggested by Admiral Bowles would have been acceptable to Bethlehem had it not been for the fact that these stock ships had been undertaken by Bethlehem as a speculation and had it not been for the enormous increase in expense in connection with the improvements at the Alameda plant?

A. I don't know.

Q. Mr. Powell consulted you, did he not, with respect to his proposal of December 14th, offered in evidence as Exhibit G-107, which I have shown you, relating to the stock ships?

A. The $205. a ton ships, do you mean?

Q. That is correct, the letter which quotes a price of $205. per dead weight ton?

A. I don't know whether he consulted with me in reference to it or not.

Q. Do you think it is likely that he did or did not?

A. He may have or he may not have. I don't know.

Q. Do you remember whether you had approved that price in connection with the submission of this proposal of December 14th?

A. I had nothing to do with that price.

MR. BROWN: I offer in evidence letter dated December 14, 1917, addressed by Admiral Bowles, to the Bethlehem Shipbuilding Corporation, previously offered as Exhibit G-43.

THE MASTER: If there is no objection it is admitted as Exhibit G-43.

MR. BROWN: I would like to read the letter in question which is as follows:

"The Fleet Corporation has received your letter of December 14th in regard to Hulls Nos. 150, 151, 153 and 170 at the Union Iron Works building for your own account and which were requisitioned by the Fleet Corporation under its order of August third.

The Corporation notes that, having been invited to submit a price for the completion of these vessels in accordance with the original specifications under which you had begun them, you now renew the offer originally made October 26, 1916, to complete these ships at a price of $205. per d. w. ton.

The proposition as originally made was unsatisfactory to the Fleet Corporation and considered to be in excess of the just compensation which the law requires.

You are now informed that the Fleet Corporation has decided to award you, as just compensation and a reasonable price for the completion of these vessels, actual cost plus ten per cent;

with the understanding that the vessels shall meet the full military requirements; that the plans are to be approved by Lloyds and the vessels subject to Lloyds' survey, and also satisfactory to and to pass the inspection of the United States Steamboat Inspection Service for war zone requirements.'"

BY MR. BROWN:

Q. After receipt of that letter do you remember whether you and Mr. Powell together took up the question of the stock ships again with Admiral Bowles?

A. That was December 14th?

Q. In answer to Bethlehem's letter of December 14th?

A. I don't recall anything taken up then until they were finally settled. If there was anything discussed about it it must have been by Mr. Powell. If I had anything to do with it, I have entirely forgotten it.

Q. You don't remember that Mr. Powell ever consulted you after that letter of December 14th, 1917, with respect to the stock ships?

A. I don't see that there would be any occasion for him to consult with me in reference to them.

MR. BROWN: I offer in evidence letter dated December 20, 1917, addressed to J. W. Powell, by Mr. Charles Piez, originally offered as Exhibit G-112, which appears at page 233 of the Documentary evidence.

THE MASTER: If there is no objection it will be admitted as Exhibit G-112.

BY MR. BROWN:

Q. I will ask you to look over that letter which has been offered in evidence as G-112?

A. Yes, sir.

Q. Did Mr. Powell consult you in connection with the preparation of that letter?

A. I believe not.

Q. Did you give him any figures in connection with the breakdown referred to in that letter?

A. No, sir.

Q. And, as far as you know, you have no idea as to how Mr. Powell arrived at that breakdown? I mean you were never advised as to how Mr. Powell arrived at that breakdown?

A. That is my recollection.

Q. And you are quite sure that you were never consulted with respect to it in connection with the submission of this letter?

A. I feel quite confident that is the case, because these stock ships were special consideration and I think all negotiations with the Shipping Board were originally started with Mr. MacGregor of the Union Shipbuilding Company, and Mr. Powell carried them over after the formation of the Bethlehem Shipbuilding Corporation.

Q. It appears from the agreed on figures in this case, as I understand it, that with respect to the four Union Stock ships which were afterwards included in contract 191, that there was an average saving per ship amounting to $672,000. in round numbers, and I now ask you if I am correct in my figures, how, according to your information, that saving was effected by Bethlehem in connection with these ships. Is that question clear?

A. No.

Q. (Previous question repeated.) Can you explain how that saving was effected if I am correct in my figures?

A. No, I can't.

Q. You would have no explanation as to how it would have been possible for Bethlehem to have effected this saving, if my figures are correct?

A. Why, yes, I can give you a general statement on that.

Q. Well I would like to get your explanation, if you have any, as to the manner in which Bethlehem effected this saving averaging $672,000. in round numbers, with respect to each of the four Union stock ships included in contract 191. Would you like to have the question repeated?

A. I think I understand what you are talking about.

Q. (Repeated). I would like to get your explanation, if you have any, as to the manner in which Bethlehem effected this saving averaging $672,000. in round numbers, with respect to each of the four Union stock ships included in contract 191. Will you answer that question.

THE MASTER: The question is how it was and that means if this witness knows.

MR. EVANS: He says he did not and Mr. Brown asked him if he could guess and he said he could guess.

BY MR. BROWN:

Q. What was your answer to my last question?

A. I will have to answer that by saying that I haven't got sufficient information to enable me to tell you just how they made that saving.

Q. So that we may have the matter clear, I am

not asking you whether you can tell us about the saving to the exact dollar, how much saving was effective or why it amounted exactly to $672,672. per ship, but what I am asking you is if you know how a very substantial saving amounting to approximately $672,000. was effected by Bethlehem in connection with these ships?

A. Well, I could tell you probably how such a thing could be, if you wanted, but as far as being applicable to these particular ships I haven't got the information to enable me to do it.

Q. I feel the Master would like you to explain how you could have effected that saving?

A. You might have effected the saving by having purchased your materials at a period when they were very much lower than the replace price of such materials, and that would be quite substantial.

Q. Just on that subject, as I understand, the materials for these ships were actually purchased at a time when the prices were very much lower than the prices current in December 1917; is that correct?

A. I don't know.

Q. So you don't know whether Bethlehem effected any saving with respect to the item of materials; is that correct?

A. That is correct.

Q. And, as a matter of fact, practically all the materials, and certainly the very substantial part of the materials for these ships, had all been purchased by Bethlehem prior to the negotiations in December relating to these ships?

A. Yes, sir.

Q. Now tell us on what other items Bethlehem

could have effected savings with respect to these ships?

A. I don't know.

Q. Well you were going to tell us how it would be possible for them?

A. Well I mentioned your material proposition.

Q. Is that the only one you can think of? There must have been some other way for them to effect this enormous saving of $670,000. per ship in connection with these ships. Can't you think of any other way?

A. Mr. Brown, I think you better get hold of somebody that has handled the work in the yard because my work stopped when I placed the plans in the yard and when I placed the materials requisition with the Purchasing Department. Beyond that I had nothing to do with the situation.

Q. As I understand it, you do not care to suggest to the Master any possible way of which Bethlehem may have effected a saving of $670,000. per ship in connection with these four stock ships; is that correct?

A. That is correct. I don't care to be put in that position.

Q. Possibly I may help you out. Do you think it possible they effected some of this saving with respect to labor?

A. I don't know.

Q. Now what would you say the probability was with respect to a saving against labor?

THE MASTER: Do you think the witness's answer to that is going to be helpful?

MR. EVANS: May I suggest it is all a mat-

ter that can be demonstrated from the actual cost and by comparison with the estimates.

MR. BROWN: It is an extremely interesting, pertinent and important subject.

THE MASTER: The question in my mind is how useful it would be to the record, coming from this witness. Go as far as this witness is going to be helpful to us.

BY MR. BROWN:

Q. Do you think any saving was effected with respect to labor item in connection with these ships in view of your testimony yesterday that the allowance of 30 per cent. for anticipated decrease in efficiency was actually exceeded by Bethlehem's actual experience in connection with these ships?

MR. EVANS: Mr. Brown made no such statement yesterday.

BY MR. BROWN:

Q. May I ask again, according to my understanding you testified yesterday that your allowance of 30 percent. for anticipated decrease in efficiency of labor was actually exceeded in connection with the contract ships as completed; is that correct?

A. I didn't say that. I think I mentioned the division line of the Armistice.

Q. In other words, up to the date of the Armistice you found that the labor cost actually was exceeding your allowance of 30 percent. for anticipated decrease in efficiency?

A. Yes, sir.

Q. But these contract ships were the first ships completed by Bethlehem, were they not?

A. Well there may have been a considerable

amount expended on those ships long before the rise in wages.

Q. Do you take the position that in connection with the stock ships that your anticipated decrease in efficiency in connection with the preparation of the chart amounting to 30 percent., was exceeded or equaled, or don't you know anything about it?

A. I don't know.

Q. But, at any rate, summing the matter up, as I understand it, you cannot explain to us in what manner Bethlehem effected or might have effected any saving in connection with those stock ships; is that correct?

A. I haven't given it any consideration whatsoever and I haven't any information which will enable me to do anything with it.

Q. Is my understanding correct that the first time the Half-Savings contract was discussed with Admiral Bowles was at the conference of January 3, 1918?

A. I don't know.

Q. But you remember at that time, do you not, that Admiral Bowles was insisting on the adoption of the lump-sum form of contract and Mr. Powell was advocating the adoption of the Half-Savings form of contract?

A. That is my recollection.

Q. And you cannot recall any previous occasion on which the Half-Savings form of contract had been discussed with Admiral Bowles, or can you?

A. I cannot.

Q. Admiral Bowles, incidentally, was the representative of the Fleet Corporation with whom you and Mr. Powell did business, was he not?

A. Well Mr. Powell did a lot of business with

Mr. Piez and Mr. Radford, as well as with Admiral Bowles.

Q. You mean Mr. Powell told you that?

A. Yes.

Q. Didn't you testify at the previous proceeding that Admiral Bowles was the man with whom you Bethlehem representatives did business in connection with these contracts?

A. We did business with him and also with Mr. Piez.

Q. Admiral Bowles was the representative of the Fleet who was in active charge of this negotiation with you and Mr. Powell, and, if he was not, who was?

A. Mr. Piez had a lot to do with it.

Q. You never had conferences with Mr. Piez?

A. Mr. Powell had a lot more to do with these contracts than I did.

Q. As far as your personal contact was concerned, it was with Admiral Bowles?

A. That was my contact, with what I had to do with it.

Q. As the principal representative of the Fleet Corporation in connection with the negotiation of these contracts?

A. Yes.

BY THE MASTER:

Q. Was Mr. Radford present at any of the conferences you had with Admiral Bowles?

A. In connection with the contracts, yes, sir.

Q. He acted as Admiral Bowles's assistant, did he not, in these conferences, and he was present and took part in the discussions?

A. Yes, sir.

BY MR. BROWN:

Q. Just to clarify the picture for the Master, the only conferences that you had with representatives of the Fleet, referring to these contracts in controversy, took place on December 12th, December 18th, 1917, and January 3, 1918, did they not?

A. That, I believe, is substantially so.

Q. Mr. Radford was present at the January 3rd, 1918, conference, was he not?

A. Yes, sir.

Q. Can you remember whether he was present on December 18, at your conference at that time?

A. I do not.

Q. At the time of preparing your chart, it was a matter of common knowledge in the shipbuilding business, was it not, that while the price of shapes during 1916 and 1917, until regulation by the War Industry Board, had exceeded the price of plates, and that the reverse was the situation after the fixing of prices for these plates by the War Industry Board?

A. That is correct.

Q. And you testified as follows, did you not, in the previous proceeding, at pages 181 and 182 of the transcript of the proceeding: "Q. Did you know that your estimate with respect to the cost of Job 12 materials for a ship similar to Hull 253 was in excess of $37,000. in excess of what your estimate would have been if you had used a factor to determine the current price of shapes based on the cost of shapes based on the cost of shapes for Hull 253 as compared with the cost of shapes then current in December 1917? A. I did. Q. You knew? A. Yes. Q. That your estimate was that much in

excess? A. Yes. Q. Of what it would have been? A. Yes."

Q. Did you so testify?

A. Yes.

Q. Is that correct?

A. I believe that is the testimony I gave.

Q. As I understand it, in connection with any tank or cargo ship which might have been required by the Fleet, all that was necessary for you to have, in order to submit an estimate, was this chart which you prepared; is that correct?

A. Yes, sir.

Q. So if you had been asked to submit an estimate with respect to, we will say, a 4800 ton cargo ship, East Coast Construction, you would have been able to determine a proper estimate from your chart, would you not?

A. A 4800 ton cargo ship—if the line had been carried down that far, yes. It probably was. I don't know.

Q. And the line was carried down that far, was it not?

A. Yes.

MR. BROWN: I offer in evidence letter dated April 18th, 1918, addressed by H. Brown, Technical Manager, to the United States Shipping Board, previously offered as Exhibit G-132, which appears at page 385 of the Documentary Evidence.

THE MASTER: There being no objection it is admitted as Exhibit G-132.

MR. BROWN: With the Master's permission, I will read only two paragraphs of the

letter, which appear at page 386 of the Concessions: "Moore's 10 tugboats duplicates in all respects to those estimated for with United States Shipping Board Emergency Fleet Corporation, its contract 184. The prices, estimates and conditions of contracts and estimates the same as for the last 14 boats ordered, or as an alternative to the above we can construct and deliver three cargo vessels of about 4800 dead weight tons under the same terms and conditions of contract as entered into for other contract vessels constructed by us with the United States Shipping Board Emergency Fleet Corporation, the prices, however, to be determined after we have had an opportunity to prepare plans and specifications and estimates of cost."

BY MR. BROWN:

Q. As I understand, Fore River Hulls 253 and 254 were duplicates of Hulls previously built at Fore River, Hull Nos. 244 and 245; is that correct?

A. Yes, sir.

Q. And, as I understand it, you previously testified that the material costs shown in this Exhibit G-6, furnished to the Government by Bethlehem, included changes and extras, did you not? Do you recall that testimony?

A. On 253?

Q. In all the ships referred to in G-6.

A. What are they?

Q. (Exhibit shown witness).

A. Yes, sir.

Q. Prior to the regulation of steel prices by the War Industry Board, the prices of steel had been considerably higher, had they not, than after such regulation?

A. Yes, sir.

Cross Examination.

BY MR. EVANS:

Q. You were asked about these stock ships on which Mr. Powell submitted a lump-sum figure of $205. a ton. They were some ships that Bethlehem had started to build in their West Coast yard, not under contract but to sell on the open market; isn't that right?

A. Correct.

Q. And prior to the consolidation of the Bethlehem yards into the Bethlehem Shipbuilding Corporation, a Mr. MacGregor had been the President of the Union Yard, had he not?

A. Yes, sir.

Q. And back in October of 1917, Mr. MacGregor, in answer to a request from Admiral Capps had submitted a price of $205. a ton on those boats, hadn't he?

A. Yes, sir.

MR. BROWN: I do not want to interrupt any more than I can help but Mr. MacGregor's offer was in writing and it was offered as an Exhibit at the last hearing and I don't think that we ought to have Mr. Brown's recollection of what was in that letter, because that is all he knows himself. Mr. MacGregor's offer only related to some of these ships, not to all.

BY MR. EVANS:

Q. I show you a letter which appears at page 149 of the Documentary Evidence, and which was previously offered in evidence as Government Ex-

hibit 96, and I will ask you whether the ships which are referred to in that letter are the stock ships which Mr. Powell referred to in his letter of December 14th?

A. Three out of four.

Q. Is that right, that there were three stock ships referred to in Mr. MacGregor's offer at $205. a ton?

A. Yes.

Q. Whereas Mr. Powell's subsequent offer included a fourth stock ship building at Union or Alameda, and also a similar stock ship which was being built at Sparrow's Point; is that right?

A. Yes, a smaller ship.

Q. A smaller ship at Sparrow's Point?

A. Yes.

Q. You said that at some time during your discussion with Admiral Bowles about these stock ships he offered a lumpsum price of $180. a ton, is that right?

A. Yes.

Q. Was there anything said in connection with that offer regarding wage protection?

A. Yes.

Q. What was that?

A. That offer to be made on the same basis of contracts made with other people with a wage protection.

Q. In other words the price would be increased as wages would increase?

A. Yes, but he also made it general and we did not know it at the time they were making freight allowances, and it was possible it included freight allowances.

Q. But that was not discussed at the time?

A. No, sir.

Q. As I understand it all of these stock ships were subsequently taken on the basis of the Half-Savings form of contract?

A. Yes, sir.

Q. And that was an agreement that you arrived at with Admiral Bowles and Mr. Radford at your conference on January 3rd, 1918; is that correct?

A. That is my recollection of it.

Q. Where did you get the figures which you used in your estimated or base cost of the contract covering those stock ships?

A. That was settled down in the conference of January 3rd with Admiral Bowles.

Q. And where did you get the figure there used as the base or estimated cost of the contract?

A. As I recall the estimated costs were not considered at all. This was a matter of negotiation principally handled by Mr. Powell and Mr. Bowles.

Q. Do you know how the estimated cost compared with the cost as it appeared on your chart?

A. They show about what is on the chart.

Q. In other words the estimated or base cost as finally agreed upon for these stock ships was approximately the cost as it would have been if you had taken it from your chart; isn't that right?

A. Yes, sir.

Q. Can you tell us how the cost of these stock ships to the Fleet Corporation, if you had accepted Admiral Bowles offer to build them at $180. a ton lump-sum, with wage protection, how the total cost would have compared to the price which Bethlehem is now asking under its contract, including the cost plus the fixed fee, plus Bethlehem's one-half of the savings?

A. The price that Bethlehem is asking to be paid for the vessels is approximately $184. a ton.

Q. When you say what Bethlehem is asking, that includes cost, fee and one-half of the savings?

A. Yes, sir.

Q. In other words what they claim under their contract?

A. Yes, sir.

Q. That runs about $184. a ton?

A. Yes, sir.

Q. Now have you figured out how much those vessels would have cost the Fleet Corporation if they had been built on a lump-sum contract at $180. a ton with wage protection?

A. Yes, sir.

Q. How much?

A. $192. a ton, approximately.

Q. In other words they would have cost about $8.00 a ton more, would they?

A. Yes, sir.

Q. And by the same logic, Bethlehem's profit would have been $8.00 a ton more than what they are now asking under the contract?

A. Yes, sir.

Q. Mr. Brown asked you some questions about this chart and read you some of your testimony which you gave before Mr. Roberts at the time of the previous hearing. I call your attention to the testimony which appears at page 237 there, referring to the extensions of the cost per ton cargo on the East Coast, you testified as follows:

"Q. (By Mr. Brown). In other words, as I understand it, these extensions to the cost per ton cargo East Coast lines were probably lines that were put on there in the development of this chart? A.

No they were probably put on there afterwards. Q. They were probably put on there afterwards? A. Yes. Q. Although you cannot say when they were put on? A. No. Q. Why they were put on? A. Absolutely." Do you recall so testifying?

A. Yes, sir.

Q. And is that in accordance with your best recollection?

A. Yes, sir.

Q. Were the erased lines which appear to branch off from the cost per ton of the East Coast cargoes above the 12000 ton line, put on that chart in connection with the development of your estimates for the contracts with the Fleet Corporation?

A. No, sir.

Q. Did they have anything to do with your estimates?

A. No, sir.

Q. Were the erased lines which branch off apparently from the East Coast cargo total cost line about above the 10,000 tons, put on there in connection with the development of that chart for the purpose of arriving at estimates of cost for these contracts with the Fleet Corporation?

A. No, sir.

Q. Did they have anything to do with your estimates of costs under those contracts?

A. No, sir.

Q. In point of fact, what is the largest cargo boat that Bethlehem built for the Fleet Corporation on the east coast?

A. 7400 tons.

Q. And where were they built?

A. At Sparrow's point, and Harlan Plant.

Q. You did not build any cargo boats for the

Fleet Corporation on the East Coast of 12,000 tons or over?

A. No, sir.

Q. Did you build any cargo boats on either the East or the West Coast over 12,000 tons for the Fleet Corporation?

A. Contracted for two, I think it was 12,000 tons.

Q. That was on the West Coast?

A. I mean on the West Coast. That is what you mentioned, wasn't it?

Q. When was that contract? It was not the original contract? It was not part of the original proposal of 1917, was it?

A. No, sir.

THE MASTER: We are not concerned with those two 12,000 ton boats he has referred to here at all, are we?

THE WITNESS: They were contracted for. They were Hulls 215 and 216.

BY MR. EVANS:

Q. But those contracts were cancelled subsequently, were they not?

A. I think there were two stock ships, 12,000 and 11,800 tons, I think you will find.

THE MASTER: No. 170 was a 12,000 ton boat. That was why I was inquiring about that. That is not one of the two you just referred to that were on the West Coast.

BY THE MASTER:

Q. That stock ship was on the East Coast, wasn't it?

A. No, sir, that was on the West Coast.

Q. Is that one of the two you were referring to?

A. No.

Q. There were two in addition to that?

A. Two in addition to that. That is my recollection. They were 12,000 or close to it. They may have been 11,800.

BY MR. EVANS:

Q. You were also asked by Mr. Brown regarding this spot on the East Coast tanker total cost line which appears as 9100 tons and has opposite the letters "F.R." Mr. Brown asked you whether you did not testify at the last hearing that that spot was not put on your chart until after it was completed. I call your attention to your testimony given before Mr. Roberts, which appears at page 209. You testified as follows, did you not: "Q. (By Mr. Brown). You say that was put on before? A. The contracts, yes. Q. Now, according to the best of your recollection that spot for Fore River the 9100 tanker East line was put on before the contract with Fore River was entered into? A. I should say yes."

Q. Did you so testify before?

A. Yes.

Q. And is that your recollection that the spot which appears at 9100 tons of the East Coast tanker total cost line was put there before the contracts were made?

A. Yes, sir.

Q. And was it put there probably in connection with the development of your graph?

A. Yes, sir.

Q. You were asked at the last hearing before Mr. Roberts a great many questions about the appearance of the chart.

A. Yes, sir.

Q. And one of the questions which you were ask-

ed, and I think Mr. Brown read the question and your answer to it again today, was whether you could explain what appears to be a fact that there are certain erasures in connection with the East Coast Cargo line which are apparent at least at a point below, we will say, 7,000 tons, and that there are also certain erasures which appear near the East Coast cost per ton cargo line which are apparent running up perhaps to 10,000 tons. You were asked about these erasures at the last hearing, were you not?

A. My recollection was that they were—

Q. I am asking you whether you were asked about these erasures at the last hearing?

A. I think so.

Q. Now I call your attention to the testimony that you gave before Mr. Roberts, which appears at page 235. Your attention was directed to these erasures and your testimony was as follows: "Here is what he is talking about. You have got a line all in through here (indicating). You had some indications of over here, probably started curves, I don't know what it is, and this line here, this line developed along here, you will find there is a line probably appearing off in that manner. Now it didn't look quite the way it ought to so you may have had this curve cost per ton dead weight erased the original proposition you had in here in order to get in your opinion what will be the proper cost per ton dead weight line, then you took this line here (indicating) and you also probably used that. I think you will find there is a line come along in here again on this (indicating) or you may have arrived at what your differential actually would have been, and you will find this line here (indicating) is also

somewhat modified as a compromise between these lines again." Now I confess that as that got down on the record it is not very intelligible to me and I don't believe it is very intelligible to the Master and I am afraid that the explanation that you made this morning, when it gets down in black and white, will not be any more intelligible. You refer there to a differential. What is the differential?

A. In percentage of cost between the tanker and the cargo value.

Q. So that in the testimony which I have just read to you, talking about the change which has apparently been made in the cost per ton of the East Coast cargo boats, is that right?

A. As related to the tanker.

Q. Now without going over that testimony again and trying to make that clear, will you state again what it was that you attempted to state as the stenographer got it down there in the last hearing as to the explanation for those erased lines on the cost per ton and the relation if there is any relation, between those erasures, and the erasures that also appear on the total cost line of the East Coast cargo boats?

A. After having adopted the tanker East Coast line both as to total cost and per ton dead weight, in order to establish the line for the cargo boats I used a ratio difference between the cost of the tanker and what would be the cost of an equal sized dead weight cargo vessel. That varied from the largest ship to the smallest ship, increasing in the amount of ratio on the smallest ship. I started out on a 15,000 ton boat, as I recall it, at approximately 10 per cent. On a 10,000 ton boat you will find it is 15 per cent., and on a 5,000 ton boat on this erased

line here in relation to the tanker, you will find it is 20 per cent.

Q. Just let me interrupt you. If you had carried the proportionate differential right straight through it would have been 20 percent. of that point, wouldn't it?

A. Yes, sir. Then it would mean at 12,500 tons it would be 12½ per cent, and at 7,500 tons it would be 17½ percent. After having developed this curve as sketched around in there.

Q. You mean now your original—

A. Having developed the cost per ton dead weight for the cargo boat with the relation of the cost per ton per dead weight for the tankers, this was sketched around through here, may have been roughly taken off and your points plotted on to your total cost. Now your total cost don't mean so much to you in relation to one ship to the other as your cost per ton dead weight means and you are more familiar with the character of curve because your total cost is practically a straight line running down around 7,000 tons, maybe up to 12,000 or thereabouts, and that can vary $10,000. on your line here without giving you an appreciable difference in your curve, whereas on your curve of cost per ton dead weight your division is $1.00.

Q. Whereas on your total cost each division is how much?

A. On your total cost it is $10,000. This gives you a better idea. Now after having that in that curve, for some reason or other which I have not got the information on at the time, it looks as though it would have to be changed some—

Q. What do you mean, the East Coast line?

A. Below the 10,000 line that the curve looked

probably for a cargo boat as being what you might term for being too flat, would produce vessels of a higher cost, and that then was changed. Now you might be running a curve around here and you might have started just across for a short distance, and taken spots off to the line of total cost.

MR. EVANS: I think we are getting as bad as we were before Mr. Roberts.

THE MASTER: We will let Mr. Brown look at the chart and the lines and get the lines clearly in his mind and after we come back from lunch get this thing so it means more.

(Recess from 1 o'clock to 2 o'clock P. M.)

2:00 p. m.

HARRY BROWN, resumed.

BY MR. EVANS:

Q. Before lunch or recess you were explaining to us the relation between the erased lines on the cost per ton line and the erasures which appear on the total cost of the East Coast cargo boats below 10,000 tons. Will you continue your explanation? You told us before luncheon that, as you originally constructed your cost per ton line, that was figured on a differential from your cost per ton line for East Coast tankers?

A. Yes.

Q. And I think that is about as far as you had gotten. Now will you resume your explanation from that point?

A. There is an erasure extending from the $245 per ton line to the $200 per ton line on the cost per ton dead weight of the East Coast cargo boats. It is quite probable that the line, not terminating tangentially to any other part of that curve, may merely have been put in as a test line for vessels of from one to three thousand tons. It is quite possible that that was transferred to your total cost line. A further erasure was made on the total cost line after the final determination of what appeared to be acceptable as the cost per ton dead weight line. I think that covers the erasures.

Q. You testified at the last hearing, I think, that your base line was your East Coast tanker line; is that correct?

A. Yes, sir.

Q. And does that apply both as to the line representing total cost and the line representing cost per dead weight ton?

A. Yes, sir.

Q. They were the base lines in each case?

A. Yes, sir.

Q. You also testified, as I recall it, that after you had plotted that base line you plotted the total cost line for the East Coast cargo boats by taking off points representing the differentials that you originally allowed, 15 per cent. at 10,000 tons and 10 per cent. at 15,000 tons; is that correct? I mean am I correct that that was your testimony before?

A. I believe it was.

Q. And I think you then said that, having gotten those points representing the differentials between the two lines at those two points, you probably took a baton and drew in a line representing the total cost of cargoes to be built on the East Coast, or that you may have drawn it in rough hand. Is that your testimony?

A. Yes, sir.

MR. BROWN: At this proceeding or at the former hearing?

MR. EVANS: At the hearing before Mr. Roberts, I am talking about.

MR. BROWN: Not at this proceeding?

MR. EVANS: No.

MR. BROWN: There was nothing said about rough hand at this proceeding.

MR. EVANS: No, nothing said about that so far as I recollect.

BY MR. EVANS:

Q. Do those spots which appear on the East Coast Cargo total cost lines, 3,000, 5,000, 7,000, 9,000, 10,000, 12,000, 14,000, 16,000 and 18,000 tons—do those spots bear any relation to the cost per ton line for cargoes on the East Coast?

A. Those spots are the price per ton line multiplied by the total dead weight, which gives the total cost of the vessel.

Q. In other words, there must be a definite relation between the two lines?

A. Yes, sir.

Q. Do those spots indicate to your mind how the total cost line, as it was finally developed and appears on that chart, was developed with relation to the cost per ton line?

A. Yes, sir.

Q. What do they indicate?

A. They indicate that you took the cost per ton, multiplied it out by the tons dead weight, plotted the total cost, and it is quite possible that you took a triangle or straight edge that you might have had at the time and just drew between the spots and discarded the original line, or it may have covered the original line, or you may not have had that line there at the time at all after you determined the cost per dead weight ton to your satisfaction.

Q. In other words, if I understand your answer correctly, it indicates to you now that your final total cost line for East Coast cargo boats was developed from your cost per ton line; is that right?

A. Yes, sir.

Q. Although originally, as you said before in the

previous hearing, it was probably drawn in with a baton to go through the two points representing your differentials?

A. It is quite likely that there was a line in there before you drew your cost per ton dead weight line in by means of a baton.

Q. If you changed your curve representing your cost per dead weight ton, that would require a corresponding change in the total cost line, would it not?

A. Yes, sir.

Q. But the difference in point of number of squares on the total cost line would be very much less than the difference in number of squares on your cost per dead weight ton lines, would it not?

A. That depends upon the tonnage.

Q. I mean below 10,000 tons?

A. Yes, sir.

Q. Does that indicate to you, apart from any definite recollection you may have of the matter, whether the East Coast cargo line was used as the base line from which the other lines were developed, or whether one of the other lines was used as the base line from which the East Coast cargo lines were developed?

A. The East Coast cargo line was developed from the tanker line.

Q. That is your recollection, as I understand it?

A. Yes.

Q. But does the appearance of the chart either confirm or contradict that?

A. The chart confirms it.

Q. Why?

A. Well, the relation of one size of boat to another is more uniform on a tanker than it is on a

cargo boat. The natural thing for you to take in trying to develop an approximation, especially where you were trying to get some curves within a probable range of cost, we had no amount of cargo tonnage on which we could base an estimate—

Q. I do not think you are answering my question.

A. Possibly not.

Q. Maybe you did not understand it. I did not ask you why you used tankers as your base line, but I am asking you whether the appearance of the chart, particularly those erasures to which I have just directed your attention, either confirms or contradicts your independent recollection that it was the tanker line East Coast which was the base line from which the others were derived?

A. It would indicate to me, Sir, that if I developed the cargo line first, the probability is that the tanker cost per ton dead weight would be a somewhat different line from what is there.

Q. Why?

A. Because I think I would have had it dropping more, unless I had information which confirmed this line here from actual figures.

Q. "This line" being what?

A. This line being the cost per dead weight ton of the East Coast tankers,— that that made a definite line, and the relation I took of those things being constant, you will find that these relations below this point here—

Q. You mean relations between tanker cost and cargo boat cost?

A. Relations between tanker cost and cargo boat cost, are not in the same relation as they are above the 10,000 tons.

Q. In other words, you have not carried your differential through?

A. That is right.

Q. In the same proportion?

A. In the same proportion. If it was carried on this original line it would be in the same proportion.

Q. Why does that indicate to you that it was the tanker line that was used as the base and not the cargo line?

A. I thought I made that clear. If I had used the cargo line and not had any tanker line at all and I had developed this line here, the probability is that I would have taken that ratio that I took before, which was simply round figures, and drawn the tanker line down there and let it go at that and accepted that as what it would be.

Q. Your answer is not quite clear to me, and I doubt if it is to the Master. Does the fact that the erasures which appear on that chart are in connection with the development of the cargo line, and that there are apparently no erasures in connection with the tanker line, indicate to your mind anything as to which line was developed first, or which line was the base line, and if so what? Let me put it this way. Suppose the East Coast cargo cost per ton line had been your base line. Now as originally drawn, that would show a differential in direct proportion to the size of the boat, or in inverse proportion to the size of the boat, would it not?

A. Yes, sir.

Q. And if you had drawn that line that way and then had constructed your tanker line based on that differential, and subsequently had concluded that your cargo line was wrong, would you or would you

not have been obliged to make a change in your tanker line?

A. If I would have held the same ratio of difference, yes, sir.

Q. In other words, if you had drawn your cargo line first and had put in your tanker line by allowance of the differential, which is what you originally contemplated and intended to use, that tanker line would have been out of position?

A. Yes, sir.

Q. And would have had to be subsequently corrected?

A. Yes, sir.

Q. So that, in that event, it would be the tanker line which would have showed the erasure and not the cargo line?

A. Yes, sir.

Q. Now when you say that the tanker line was, in fact, the base line from which other lines were developed, are you stating that because you recall it, or because that is your assumption from looking at the chart?

A. No, it is because I recall it and it would be the perfectly natural thing to do.

Q. Do you definitely recall it?

A. Yes, sir.

Q. Do you have any definite recollection regarding these erasures about which I have just asked you, or is your explanation an attempt to give us a possible explanation, which to you seems plausible? I mean do you recall definitely that you did erase those lines and why you erased them?

A. No.

Q. Then am I correct in saying that the explanation that you have given is an explanation which, as

you look at the chart, seems to you to be a probable explanation of something about which you have no definite recollection?

A. That is right.

Q. That is correct?

A. Yes, sir.

Q. Can you think of any other plausible explanation of the appearance of that chart?

A. No, sir.

Q. You have told us that when you went to Washington on December 18th and met Mr. Powell, you reconstructed a graph?

A. Yes, sir.

Q. And you said that you did that by taking a spot representing the cost of a 10,000-ton tanker to be built on the East Coast?

A. Yes, sir.

Q. Where did you get that spot?

A. Got that spot from the original chart.

Q. How did you get it from the original chart?

A. From memory.

Q. What was the spot?

A. $200 a ton, or $2,000,000 for a 10,000-ton ship.

Q. Did you just happen to remember that?

A. I may have remembered some other points, too, but that was—

Q. No, why did you pick 10,000 tons exactly?

A. Because that is a very easy thing to remember, to carry at any time.

Q. Well, more than that, your 10,000-ton line is the line at which all of your total cost lines and your cost per ton lines cross, is it not?

A. Naturally.

Q. And it happened that on your chart as you had developed it in Bethlehem, the cost of a 10,000-

ton tanker hit exactly $200 a ton, or a total cost of $2,000,000; is that right?

A. Yes, sir.

Q. And that was an easy figure to remember?

A. Yes, sir.

Q. And one that you did remember, so that when you say you reconstructed the chart in Washington, you do not mean to say, as I understand it, that you developed factors in Washington and did over again, or attempted to do over again, the work that you had already done in Bethlehem?

A. That is right.

Q. You did not do that?

A. No.

Q. What you did was to reconstruct from memory a copy of the chart, or part of the chart, which you had in Bethlehem; is that right?

A. Yes, sir.

Q. And you were helped to do that by the fact that you had one spot on that chart definitely fixed?

A. Yes, sir.

Q. And that was the cost of a 10,000-ton tanker?

A. Yes, sir.

Q. And it was on 10,000-ton tankers particularly that you were asked to estimate, was it not?

A. Yes, sir.

Q. By the way, there were no boats over 10,000 or 10,100 tons included in the original estimate, were there—no tankers?

A. No tankers.

Q. And no other boats? There were no boats in the original estimate of December 19th in excess of 10,100 tons, were there?

A. You have the letter there.

Q. Just look at that letter, which is Exhibit G-

109, and see if I am not right in saying that your proposal did not include any vessels over 10,100 tons—well, except the troop ships, but there was no estimate of cost on the troop ships?

A. No. There is none over 10,100 tons except the troop ships.

Q. I notice that in this letter Mr. Powell says, "The figures quoted above for the smaller tank vessels are based upon those given for the 10,000-ton vessel." Is that in accordance with your recollection?

A. Yes, sir.

Q. That your estimates were based on your figure of $200 a ton, or $2,000,000 for a 10,000-ton tanker to be built on the East Coast?

A. Yes, sir.

Q. And that was the figure that you had developed in connection with the preparation of your chart which you had in Bethlehem?

A. Yes, sir.

Q. And you got your cost for the West Coast tankers by adding five per cent.?

A. Yes, sir.

Q. And in order to get your cost for the 7500-ton tankers and the 7400-ton cargo boats, which were also included in that proposal, as I understand it, you drew a curve which, in your experience, represented the approximate drift of the curve to represent the cost of vessels of less than 10,000 tons; is that right?

A. Or as near as the line or curve that was produced on the original chart.

Q. And that would be something deviating slightly from a straight line, would it not?

A. Yes, sir.

Q. How did you know how to draw that line? I mean if you had drawn that line from your 10,000 point directly to zero, would you have gotten an approximate cost of boats under 10,000 tons, say at 7500?

A. No, sir, they would all have been the same per dead weight ton.

Q. And that would have been wrong?

A. Yes, sir.

Q. How did you know how much of an allowance or drift to make in that curve in order to represent a proper differential in the cost of vessels under 10,000 tons? Did you have any figures to go by?

A. I do not recall just whether I had any spot on the thing or not, or whether I recalled the intersection from that 10,000 to the base line, or approximately what it was, or just how I got it.

Q. Was it a new thing for you to be estimating costs by the use of such curves?

A. No, sir.

Q. You had been in the habit of doing that, had you?

A. Yes, sir.

Q. And were you familiar, in a general way, with what the drift of the line should be below 10,000 tons?

A. Yes, sir.

Q. Was it your experience, then, and familiarity with that method of reflecting costs that enabled you to draw in a line which would approximately represent the cost of boats under 10,000 tons, assuming that you had a spot representing the cost of a 10,000-ton boat?

A. Yes, sir.

Q. You would not pretend to say that that was accurate to the dollar, would you?

A. No.

Q. How accurate would you think it was in terms of percentage?

A. It would be within one and a half to two per cent.

Q. You think, from your experience and familiarity with the use of this kind of a graph, that you could hit it within one and a half or two per cent.?

A. Yes, sir.

Q. Now Mr. Brown asked you some questions yesterday insinuating that your testimony as to the reconstruction of that chart in Washington was an after thought, which you had never thought of, or at least had never discussed with Bethlehem counsel, until after you had testified on behalf of the Government in the proceeding before Mr. Roberts. Is there any basis whatever for that insinuation?

MR. BROWN: May I deny on the record that my questions had any such insinuation, and in explanation of that I might say that I thought Mr. Brown probably had the second chart very well in mind, but that I do say that I made the express statement that I do not think he had discussed it with anybody in connection with Bethlehem until after the May hearings before Mr. Roberts.

BY MR. EVANS:

Q. Then I will accept Mr. Brown's explanation of the purport of his questions, and I will ask you whether there is any basis for his last statement, that you had never discussed this reconstructed chart and the circumstances and manner in which it was made with Bethlehem counsel until after your

testimony given on behalf of the Government in the proceeding before Mr. Roberts?

MR. BROWN: Other than Mr. Moore, I should have added to my explanation.

A. There isn't anything in it. I think I told you yesterday in the testimony that it had been with Mr. Moore and I did not recall to just what extent it had been with the others.

BY MR. EVANS:

Q. You said yesterday that when you originally were employed, I think in 1924, to take up this case, that it was Mr. Moore who was taking the active part and with whom you were having your discussions?

A. Yes, sir.

Q. And I think you said, while you thought it was quite likely, that you could not state definitely that you had ever discussed the making of that reconstructed chart with either Mr. Wood or Mr. Robison or myself. Now I want to refresh your recollection about that, Mr. Brown. There is no doubt whatever that you discussed that with Mr. Wood, is there?

A. I discussed so many things with Mr. Wood that I cannot exactly say.

Q. Then let me refresh your recollection. You remember talking to me about this case on several occasions too, do you not?

A. Yes.

Q. Do you remember one occasion, which was probably a matter of weeks or perhaps months, several months, before the hearing before Mr. Roberts, when I met you and Mr. Powell in Mr. Wood's office in New York?

A. Yes, sir.

Q. That was the first time that you and Mr. Powell and I had met together, according to my recollection; is that correct?

A. Yes, sir.

Q. Is that in accordance with yours?

A. Yes, sir.

Q. And at that time do you recall that we went over with you and Mr. Powell the letter or proposal of December 19th and how it was made up?

A. Yes, sir.

Q. And that, in connection with our discussion of that phase of the case, you told us all about having gone to Washington without your original chart and having reconstructed a chart there in Washington, exactly as you testified here yesterday?

A. We said a good deal in connection with charts there at the time.

Q. Have you any doubt that you told me at that time, or told all of us who were there, exactly everything about this reconstruction of the chart?

A. I do not want to say that, Mr. Evans. I do not recall.

Q. Don't you recall that there was some question about the cost, or the estimated cost, of the 7400-ton cargo boats?

A. Yes.

Q. And that in connection with that you explained that you did not have any definite figure for a 7400-ton cargo boat in Washington at the time you made your estimate, and that it might be that your line was a little high or a little low on your reconstructed graph compared to what it was on your original graph? Don't you remember that?

A. Yes, I do.

Q. Now that I have refreshed your recollection,

can you not say positively that on that occasion, at least, which was in advance of any hearings before Mr. Roberts, you did discuss with us and tell us all about the reconstruction of that chart?

A. Yes.

Q. Is that right?

A. I can recall that, yes, sir.

MR. BROWN: What is that date?

MR. EVANS: I cannot fix the date. It was in advance of the hearings before Mr. Roberts?

THE WITNESS: Yes, sir.

MR. BROWN: Can we not have the approximate date?

BY MR. EVANS:

Q. Mr. Brown, my recollection is it was some time after a date had been tentatively set for the hearing before Mr. Roberts; is that correct?

A I should think that would be, yes.

Q. That would probably fix it somewhere in March or April of 1929. I am not holding you down to a definite date, but is that your recollection?

A. It would be somewhere around that, I should think, because I had not met you until shortly before the trial, a couple of months.

Q. It was a conference that we had in anticipation of the hearings before Mr. Roberts, was it not?

A. Yes, sir.

Q. Now at that meeting Mr. Powell was present, as you said?

A. Yes, sir.

Q. And do you recall whether Mr. Robison and Mr. Wood were also there?

A. Yes, sir.

Q. They were?

A. Yes, sir.

Q. It was in Mr. Wood's office, was it not, over in New York?

A. Yes, sir.

Q. You have already said that in the first statement that you gave to Mr. Moore you also told him about the reconstruction of that graph in Washington?

A. Yes, sir.

Q. Exactly as you told us here yesterday, or substantially?

A. That is correct.

Q. And don't you recall that when Mr. Wood got into the case, in expectation that he would take charge of the trial, that was one of the first things you told him?

A. That is very probably so.

Q. You have no definite recollection on it?

A. I know there was a talk with Mr. Wood about curves and so-and-so, but he did not welcome the idea very much about curves.

Q. And I think I made some remarks about curves too?

A. Yes, you made some nasty remarks about curves.

MR. EVANS: That is not for the record.

MR. BROWN: May we have on the record the remark about Mr. Wood not welcoming the idea of curves? That is very interesting.

BY MR. EVANS:

Q. Mr. Brown is disposed to make something of that answer. Will you explain what you meant by that? What did you mean when you said Mr. Wood did not like the idea of curves?

A. He was not accustomed to looking at curves and he wanted it more in the nature of a tabulation or figures.

Q. In other words, he could not read those curves as readily as you thought he ought to be able to?

A. Yes, he could not understand them and he took exception to them.

Q. That is what you meant when you said he did not like curves?

A. That is right.

Q. And I told you I thought you plotted your daily life by curves, did I not?

A. Yes, sir.

Q. Mr. Brown also asked you whether it was not a fact that it was not until you were recalled as a witness on behalf of Bethlehem in the proceedings before Mr. Roberts that you first made any reference to this reconstructed chart, and that is a fact, as I understand it?

A. Yes, sir.

Q. Now is it not also a fact that in the hearings before Mr. Roberts you were called as a witness on behalf of the Government?

A. Yes, sir.

Q. And your examination was confined to your qualification and experience as an expert and your explanation of how your original graph was made up; is not that right?

A. Yes, sir.

Q. You were not asked any questions by Government counsel as to what transpired in Washington, either on December 12th, on December 14th, on December 18th, or any other time, were you?

A. To my recollection, I was not.

Q. You were not asked any questions about the submission of the proposal?

A. No, sir.

Q. Or how the proposal which was contained in Powell's letter of December 19th was arrived at, were you?

A. No.

Q. And it was not until you were recalled by Bethlehem that that phase of the case was gone into, was it?

MR. BROWN: Oh, Mr. Evans, what a statement.

THE MASTER: That is not a statement, that is a question of the witness.

MR. BROWN: You must forget. I am sure you do not want Mr. Mason to have that impression.

BY MR. EVANS:

Q. Is that right, Mr. Brown?

MR. (JOSEPH) BROWN: Of course it isn't. Go ahead.

BY MR. EVANS:

Q. Is that your recollection?

MR. BROWN: There was full and complete examination both by you and by us in advance of the June 10th hearings with respect to the chart.

A. I think it was on the examination by Bethlehem that that was developed.

BY MR. EVANS:

Q. Yes, and that was the first time any question was asked of you about the things that were done in Washington in connection with the making up of the

proposals which are contained in the letter of December 19th?

A. That is my recollection.

MR. BROWN: There was a complete examination in reference to this original chart and its basis, both by Government counsel and by you, in advance of the hearing of June 10th.

THE MASTER: That is what Mr. Evans said.

MR. BROWN: There was a complete examination with respect to it, the basis of its preparation, the basis of the proposals submitted to the Fleet Corporation, the statement by Mr. Brown that this chart, the first chart, was the entire basis, was the basis of all the proposals submitted to the Fleet, and not one word said to us or to anyone else at that hearing of the second chart, until he was recalled on June 22, 1929. If I have to offer the record to prove that, I am prepared to do so.

MR. EVANS: I have no objection to your offering the record. My statement still holds.

BY MR. EVANS:

Q. I direct your attention to a statement you did make on your first examination, in answer to a question by Government counsel, which appears at page 211 or beginning at the bottom of page 210: "A. The whole thing was developed around the tanker proposition. It seems perfectly natural for me to take that same thing and spot along there and say we are going to build those ships at this place and this is the point and Sparrows Point plant, 10,100 tons, here is what we are going to take, and mark it. Whether I did while we were in Washington

or at Bethlehem I don't know. I don't think I had that curve in Washington." That was a statement that you made in answer to Mr. Brown's question on your original examination, did you not?

A. Yes, sir.

Q. On page 211; so that you told Mr. Brown in your first examination that you did not have your original chart with you in Washington, did you not?

A. Yes, sir.

Q. Did he ask you any more questions about that?

A. I don't remember.

Q. You also made a statement to Mr. Brown to the effect that you had never told Bethlehem counsel that you had your working papers which you had used in connection with the preparation of your original estimates of cost. What did you mean by that?

A. That the papers were never kept.

Q. You mean your work sheets were not kept?

A. The work sheets.

Q. But is not this graph that you have produced here—the original graph which is marked G-34-1/2—is not that your working paper?

A. That is your final paper.

Q. That is your final paper?

A. Yes, sir.

Q. That represents the conclusion of all of your work, does it not?

A. Yes, sir.

Q. And that was the basis of your estimates?

A. Yes, sir.

Q. Now will you tell us something about your experience as a shipbuilder?

A. Something over forty years ago I started in the shipbuilding business as an apprentice with Wil-

liam Cramp & Sons, Philadelphia, Pennsylvania. After serving my time there I accepted a position with the Newport News Shipbuilding and Drydock Company, at Newport News, Virginia, as draftsman. Remained there for a period, then I accepted a position as draftsman with the Maryland Steel Company, at Sparrows Point, Maryland. Left there, went back and I accepted a position with the Newport News Shipbuilding and Drydock Company, at Newport News, as leading draftsman. Remained there for a period and I accepted a position in the office of the superintending constructor, United States Navy at Newport News, Virginia.

Q. Who was he?

A. Naval Constructor Woodward. I was then ordered from the office of the superintending constructor at Newport News to the Bureau of Construction and Repair at Washington, where I served a short time as draftsman in charge, and then became chief draftsman. Remained there until I accepted a position as assistant manager at the Fore River plant and eventually became vice-president. Remained in that position until I was appointed the technical manager of the Bethlehem Shipbuilding Corporation.

Q. During how many of those years were you associated with Admiral Bowles?

A. About ten—or thirteen; about thirteen years.

Q. During what years was Admiral Bowles president of the Fore River Shipbuilding Company?

A. From the latter part of 1903 until the end of 1913 or beginning of 1914.

Q. For how many years were you associated with Mr. Powell?

A. From 1914 until 1920, I think; when he left the Bethlehem Corporation.

Q. When you were associated with Admiral Bowles, he was always your superior officer?

A. Yes, sir.

Q. That is both while you were at Fore River Yard and before that, when you were in the Navy?

A. Yes, sir.

Q. What experience had Admiral Bowles in ship construction?

A. He was a graduate from the Naval Academy, had a post graduate course abroad in naval architecture, returned to this country as a constructor at the Norfolk Navy Yard, from there he went as constructor at the Navy Yard at Brooklyn, New York, then became chief constructor of the United States Navy, and afterwards president of the Fore River Shipbuilding Company.

Q. I have heard him referred to as the builder of the Great White Squadron; is that correct?

A. I have heard that too.

Q. What does that mean, and is there any truth in it?

A. I don't know what it means.

Q. Did he build the White Squadron?

A. He built a couple of ships while he was a constructor, and then of course he was in charge of the design of many of them when he was chief constructor.

Q. During the time that he was president of the Fore River Company, was he in touch with shipbuilding costs?

A. Yes, sir.

Q. Did he go over estimates that were made in normal times?

A. Yes, sir.

Q. Was he familiar with your method of figuring costs?

A. Yes, sir.

Q. Was he familiar, in particular with your use of curves in order to plot costs?

A. Yes, sir.

Q. You have said that your relations with Admiral Bowles had been pleasant?

A. Yes, sir.

Q. And always remained so?

A. Yes, sir.

Q. What do you know about the relations between Admiral Bowles and Mr. Powell?

A. They were very much strained.

Q. For personal reasons?

A. Yes, sir.

Q. So that there was not a feeling of confidence existing between those two men?

A. No, sir.

Q. What type of boats were built at Fore River while Admiral Bowles was there?

A. We built colliers, tankers, car floats; tugboats, river steamers, sound steamers, battleships.

Q. Any cargo boats?

A. Tankers are cargo boats.

Q. We have distinguished here between tankers and cargo boats. Did you build cargo boats as we have used that term in this case?

A. None of the particular type which the Government wanted for its war purposes.

Q. What type of cargo boats had you built at Fore River?

A. I would have to look at the list and pick out just what we did build there. We built some boats

for the Brunswick Line, which are single-deck cargo boats, but I would not say we built, there wasn't practically any built in this country, of what you would term an overseas type of cargo steamer. They were mostly special types for coastwise trade, or inter-coastal business.

Q. But you built that type of cargo boat at Fore River?

A. Yes, sir.

Q. So that is it fair to say that Admiral Bowles was familiar with the cost of building tankers and cargo boats, at least of the type that had been built at Fore River?

A. I should say that he was familiar with the cost of all different types of marine construction.

Q. Including tankers and cargo boats?

A. Yes, sir, because if you built one you could get a very good idea of what the others were. He knew about what the differentials are between them and you have a very good idea of the relative costs of them.

Q. Was Admiral Bowles generally regarded as an experienced naval shipbuilder?

A. He was.

Q. And as a man who knew his business?

A. Yes, sir.

Q. Both as to construction and cost?

A. Yes, sir.

Q. You told us, I think, yesterday that at some time Bethlehem or Fore River abolished the estimating department. Which was it, Bethlehem or Fore River?

A. Fore River had become part of the Bethlehem. It was the Bethlehem Fore River plant.

Q. Well, when the estimating department was

abolished, was that before or after the consolidation?

A. Before.

Q. It was before?

A. Yes, sir.

Q. Then your reference was to the Fore River plant when you said that the estimating department had been disbanded? When you said that your estimating department had been disbanded you referred to the Fore River plant?

A. It referred to the Fore River plant.

Q. Had you ever worked at any of the other Bethlehem Yards except Fore River?

A. No, sir.

Q. You had had no experience with those yards whatever?

A. None.

Q. You were, however entirely familiar with Fore River, and with their efficiency and methods of cost accounting at Fore River?

A. Yes, sir.

Q. About when was it that Fore River disbanded its estimating department?

A. Oh, approximately a year before the organization of the Bethlehem Shipbuilding Corporation.

Q. And prior to that date, and as far back as your connection with the company went, had you always had an estimating department?

A. Yes, sir.

Q. And estimates had been prepared by that department?

A. Yes, sir.

Q. Why did you disband the estimating department?

A. Because it was absolutely useless to maintain one.

Q. Why?

A. It was impracticable to make an estimate.

Q. Tell us how the estimating department would make an estimate in normal times?

A. They would get the plans and specifications. They would go through the specifications and get therefrom all the different parts which would have to be purchased from the outside.

Q. In the first place, they would have to have plans and specifications before they could do anything?

A. Yes, sir. They would pass these matters on to the purchasing department, who would get bids on the materials that were to be purchased. If we had not a contract with the Steel Company for the steel, we would write to them and tell them we had this inquiry and ask them to give us a quotation upon the steel, giving them approximately the tonnage, and which they would furnish steel at that price for that particular vessel during the period of construction. Then they would take the plans and they would figure out the quantities under the different classifications.

Q. Quantities of material?

A. Of material. This was done in great detail in each of the jobs, the different types and kind of materials. They apply the prices on those materials and get the material costs. The labor costs will be based upon different factors. There will be so much a pound for labor on steel, so much a board foot on lumber work, so much a square yard on paint work, and so on. In that way they arrive at the cost of the different jobs.

Q. In other words, in normal times your estimating department would take the plans and specifications and they would make an estimate in great detail?

A. Yes, sir.

Q. Of the cost of material, item by item?

A. Yes, sir.

Q. And the cost of labor?

A. Yes, sir.

Q. How long would such a job take in normal times, through your estimating department?

A. Well, it would take between two and three weeks, depending upon the size of the job. Some would take longer.

Q. You mean for each type of vessel?

A. Yes, sir.

Q. Why was it not practical to continue to estimate in that way when the war came along?

A. Because there weren't any prices that you could obtain for materials. If you asked a vendor to give you a price, he simply wasn't giving them. You had an order to place with him, he would take the order, give you the price and give you a probable delivery.

Q. Let us see about that. When you made up your estimates in November of 1917 you had a fixed price on certain steel products, did you not?

A. That is only a small proportion of the total cost of the ship.

Q. Yes, but as to your plates and shapes and rivets?

A. Yes.

Q. You had a price which had been fixed by the War Industries Board?

A. Yes, sir.

Q. So that you know what that was?

A. Yes.

Q. How long would that price hold good, do you remember?

A. Until the first of January.

Q. And then later it was extended until when?

A. The first of April.

Q. How were orders placed under the War Industries Board prices?

A. Your requisitions were gotten out, the material schedules, and then they went to an allocation committee.

Q. That is not what I meant. Did your orders call for the price fixed by the War Industries Board at the time the order was given, or did they call for a price in effect at the time of delivery?

A. The price that was in effect at the time of delivery.

Q. What about materials other than plates, shapes and rivets and steel generally which was subject to the War Industries Board price? Was there any fixed price on those other articles?

A. Oh, on some few items, for instance the price on billets, bar iron, but they did not affect shipbuilding materials until they were worked into something. The same way with copper, that is, ingot copper, casting copper. But you had a vast amount of manufactured material that was not fixed. Your lumber was not fixed, any quantity of materials that entered into it was not fixed.

Q. Were there any other items that made it difficult or impossible to estimate in the usual way? What about your estimate of the cost of labor?

A. That was extremely difficult.

Q. For what reason?

A. Because you did not know what your efficiency was going to be, due to your expansion.

Q. Why not? Give us some idea of what the expansion was.

A. The expansion would have been that when we operated in normal times at Fore River we operated somewhere between three and four thousand men. Now you expected to build up probably somewhere around 17,000 men.

Q. How high did you get, do you know?

A. At the Fore River plant?

Q. Yes.

A. I guess you got up to that fully, didn't you?

Q. I think the testimony in the last proceeding is that you got up to 20,000, 22,000, the testimony is. Is that your recollection?

A. My recollection is not clear, but I know we figured that we would have to increase the force tremendously, and it was a question where we were going to get the labor.

Q. Were there trained shipbuilders in the country enough to make up that additional force?

A. There certainly were not. There were a lot of new yards started and they took the trained shipbuilders from you to get the nucleus of their force and left you bad off.

Q. In other words, you not only could not get trained men to make up the additional force that your expansion required, but the trained men that you did have and had developed were taken by new yards as the nucleus of their forces?

A. Yes, sir.

Q. And that was going on all through the country?

A. Yes, sir.

Q. So that made the question of the efficiency of labor a very uncertain item; is that right?

A. Very uncertain.

Q. What about the question of transportation?

A. In that, of course, you did not know what was going to happen.

Q. You knew what your rates were?

A. Yes, but you did not know how long they were going to hold.

Q. You did not know how long they were going to hold, but how about the movement of the materials?

A. You would be right up against the question of the movement of material.

Q. On account of the roads being taken up by the transportation of troops and materials for the troops?

A. It looked as though it might put you in a situation where you would have to do a lot of transportation by means of trucking in order to get stuff done, which would increase the cost tremendously.

Q. Is ability to get your materials in as you need them an important element of cost?

A. Decidedly important.

Q. All of the vessels which were under construction in the various Bethlehem Yards were requisitioned by the Fleet Corporation, were they not?

A. Yes.

Q. In August of 1917?

A. Yes, sir.

Q. And some time after that requisition order you were informed that Bethlehem would be required to build additional ships for the Fleet Corporation up to the capacity of your plants?

A. That was after the organization of the Shipbuilding Corporation.

Q. After the organization of the corporation?

A. Yes, sir.

Q. Were you told at that time what type of boats you would be called upon to build?

A. No, sir.

Q. Did you have any reason to assume that you would be called upon to build any particular type of boat?

A. Well my recollection on that matter was that the Board was going to require tankers. There was a shortage, and there was no question that if tankers were going to be built the old line yards would be called upon to build them.

Q. Why was that?

A. Because they were the only places that they could be expected to be built. You couldn't expect new yards to build them because it was more particular work than the ordinary tank work.

Q. In other words work that required experienced shipbuilders to build?

A. Yes.

Q. And whether you were told or not you had reason to believe if there were to be tankers in the Fleet Corporation program it was the old yards like Bethlehem which was going to get that work because the new yards were not capable of doing it?

A. Yes, sir.

Q. When Mr. Powell told you in November of 1917 that you were shortly to be called upon by the Fleet Corporation to submit proposals for additional ships, did you then have any information as to the type, size or number of ships which you would be asked to build?

A. No, sir.

Q. And of course you had no plans or specifications?

A. Well if we did not know what we were going to build we wouldn't know whether we had plans or specifications or not.

Q. Why didn't you get Mr. Schulze or somebody else who had been in the estimating department to make up figures representing the approximate costs instead of doing that yourself?

A. Mr. Schulze had been out of the estimating department for some time and he was in the auditing department and I had been closely associated with the situation and its many changes. I felt that I could handle the job better than Mr. Schulze could or anybody else in the organization and it was my job to do it and I did it.

Q. Did you need any help from Mr. Schulze?

A. No, sir.

Q. Could Mr. Schulze help you in that job?

A. He may have.

Q. Your job, as I understand it, was to get certain information from your Purchasing Department, from your Accounting Department, from your Traffic Department, and then with that information to apply certain factors which would develop according to your own experience and judgment; is that right?

A. Yes, sir.

Q. After talking to some other people, I think you said, in the case of your proper allowance for inefficiency of labor?

A. Yes, sir.

Q. So that that was after you had gotten the

necessary information regarding the costs on boats a one-man job, wasn't it?

A. Practically so.

Q. Now you said that you had been in the habit of using curves or graphs like this for the purpose of estimating costs?

A. Yes, sir.

Q. How long had that been your habit?

A. For years, ever since I had taken up the question of studying costs.

Q. You mean to say that you had used such curves as a basis for submitting estimates, instead of putting the estimates through your Estimating Department?

A. For approximate estimates, yes.

Q. How would you use an approximate estimate, for what purpose?

A. Well often times the manager or superintendent marine engineer of an organization might send for you and tell you they are contemplating putting in additional tonnage and he don't know just what they are going to build but he thinks it will be about thus and so, and we will take a tanker, as an illustration, and as actually happened in the Standard Oil Company, and he wants to submit to his Board and get appropriations for the construction, three or four different types or sizes of ships. They would hardly ask you to sit down and note estimates for those.

Q. You mean detailed estimates?

A. Detailed estimates, but he wants to get what the approximate cost of such things will be. Well you give it to him from these curves. Now these curves may be worked up to a certain date on a standard base and the approximation on these dates

would be based on the price of steel because that seemed to be the fluctuation for the material market, and your office had an idea about what your labor situation was as to whether it had increased from the time you made this base figure or whether it dropped, but we never figured on it dropping because it always went up. You take that and you could add 10 per cent. to your base curve or you could deduct from it and you could give the man an approximation on a 10,000 ton job or a 8,000 ton job or a 6500 ton job or whatnot.

Q. You mean by taking it from that graph or curve that you had prepared?

A. Yes.

Q. And making the proper allowance for any changes in the base cost of materials or labor?

A. Yes, and not only that, but on the variation of speeds.

Q. And when you say that you had been in the habit of doing that I would like to give the Master some idea of whether that was an occasional thing or whether it was a frequent thing for you to do?

A. It was quite frequent.

Q. And what did your experience show as to the accuracy of such estimates as compared with the more detailed estimates that were subsequently to be submitted in the case of the order being placed?

A. Well I would like to put that another way. You might ask me how my figures compared with the final cost with relation to the estimated costs.

Q. All right then, just answer that question.

A. Often times my approximate estimate was closer.

Q. Your approximate estimate was closer than the detailed estimate?

A. My approximate estimate was closer than the detailed estimate.

Q. Do you happen to have such a chart?

A. Yes, sir.

Q. Will you let us look at it, please.

A. Yes, sir.

(Chart referred to marked for identification H. B.)

Q. Will you tell us first when the chart was prepared?

A. In 1912.

Q. And where did you find it?

A. In my files.

Q. In your personal file?

A. Yes.

Q. Will you tell us what the chart represents?

MR. BROWN: I object, solely on the ground that I think we are getting far afield and the record is getting pretty long. If you prefer to have this go in I withdraw the objection.

THE MASTER: I suppose Mr. Evans has a purpose in developing this.

MR. EVANS: The suggestion has been made before and will be made again that this is a most extraordinary way of estimating cost and I want to show that to this witness it was not extraordinary and that other people considered it not extraordinary.

MR. BROWN: I don't think you have read my brief or you wouldn't say that. There is no such suggestion in the brief and there was no such suggestion in the hearing before Mr. Roberts.

THE MASTER: I do not know what other courts higher than this will do but I can say that the Master will take judicial notice of the fact that this is more or less of a customary way of estimating costs in numerous concerns. The chart system has been recognized as a method of estimating costs, and if Mr. Evans believes it will be helpful to the record for the purpose of justifying Mr. Brown's method of doing it, all right.

MR. EVANS: If that issue is out of the case, and this is the first time I have been given the understanding that it is out of the case, it is not necessary.

MR. BROWN: I will withdraw my objection.

BY MR. EVANS:

Q. Go ahead and tell us what that is?

A. This is a comparison of costs between colliers and oil steamers, which are tankers, based on certain suppositions as steel at 1.25, it was based on an eight hour basis and 55 per cent. for expenses, and it was made back in June, 1912 and the figures that were taken on here were based on actual construction at the plant.

BY MR. BROWN:

Q. What figures were that that you are talking about?

A. The figures from which these costs lines were derived.

Q. Were based on the returned cost of other ships?

A. And sometimes probably on estimated cost. Of course there are varying speeds and so forth and necessarily they had to be estimates. We had a

big raft of ships of different speeds and sizes, and this represents the collier costs and this represents the dollars and this is the dead weight on the same basis with the exception this was carried in a straight line and not carried into your zero, but the cost per ton is carried through on your colliers at a speed corresponding to 10½ knots and 12 knots, and there is no cross curve of a dead weight nature on the oil steamers because it was put on here as a check. Now the use to which this was put is as I explained heretofore.

Q. Was that used in connection with lump-sum contracts for colliers?

A. Yes, sir.

Q. And was based on the cost of colliers previously constructed at the Fore River plant?

A. Yes, sir.

Q. It was based on the returned cost of Colliers previously constructed at Fore River?

A. Yes, sir.

Q. Do you remember how many colliers were considered in reaching the figures on that chart?

A. Four that I can remember of now.

BY MR. EVANS:

Q. Now on this graph that has been marked for identification H. B., you have lines representing the total cost lines exactly as you have in your graph G-34½, haven't you?

A. Yes, sir, that is the same general way except that it is on a contracted scale.

Q. And you also have the cost per dead weight ton line just as you have on your graph that you developed in this case?

A. Yes, sir.

Q. Directing your attention again to your graph

G-34½, first will you tell us what is meant by dead weight tonnage?

A. The dead weight tonnage of the ship is total displacement of the vessel to its loaded draft less the light weight of the ship.

Q. What is the light weight of the ship?

A. That takes in the weight of the Hull, machinery, spares, some tools, the water in the boiler to a steaming level and so forth.

Q. Without going into detail would it be approximately correct to say the light weight is the weight of the materials that go into the construction of the ship?

A. Yes, that is substantially it, goes into the Hull and the machinery of the ship.

BY THE MASTER:

Q. What is the difference between what you call your dead weight cost per ton and the total cost of your ship on this chart? What elements of difference are there except that one is on tonnage basis and the other is on a total basis?

(No answer.)

BY MR. EVANS:

Q. Your cost per dead weight ton is total cost divided by tonnage, is it not?

A. Yes.

Q. They are both on the basis of dead weight?

A. Yes.

Q. Now I want to find out what the light weight of the ship is and I understand that for all practical purposes we can understand that that means the weight of the materials that go into the finished ship; is that right?

A. That is right.

Q. Well it is what the ship would weigh if you could put it on a scale and weigh it, isn't it?

A. Yes, without cargo and fuel.

Q. Now then the dead weight, as I understand it, is the weight of the water which the vessel displaces when it is loaded less the light weight of the ship; is that right?

A. That is right.

Q. Now on this chart, when you read the figures along the bottom of the chart you read in hundreds of thousands, do you not, when you are talking about total cost?

A. Yes, sir.

Q. And when you are talking about cost per ton you read in dollars?

A. Dollars, yes, sir.

Q. So that to illustrate, if you want to get the cost of a 10,000 ton tanker on the East Coast you read down to the bottom line and there you get the figure $2,000,000. and that represents your total cost?

A. Yes, sir.

Q. And $200. would represent your cost per ton, is that right?

A. Correct. The chart is not complete here but by putting in your scale of dollars by dead weight this would be on your dead weight ton $210. and this $220.

Q. In other words you read in dollars instead of thousands?

A. Yes, sir.

Q. Why did you take Hulls 253 and 254 of the basis of this chart?

A. They were constructed at the Fore River plant and they were ships that I was perfectly fam-

iliar with and they were the latest ships that had been finished and it seemed to me that it was about as suitable a ship to take as the basis of any. In fact it was about the only ones that we had there.

Q. Why did you select a tanker rather than a cargo boat?

A. We didn't have any cargo boat at Fore River to select from.

Q. Did you have any cargo boats at any other points that you could have used properly?

A. May have had at Sparrow's Point.

Q. Were you familiar with the system of cost accounting at Sparrow's Point?

A. No, sir.

Q. Was it important for the purpose of making up your estimates that you should know something about the system of keeping the cost accounting?

A. I shouldn't think so.

Q. Wasn't it important to know what items were charged as labor or charged as material?

A. Well at that time when you are figuring the proposal, trying to get within the range of proper cost, I shouldn't think that that would itself have very much importance.

Q. Isn't it a fact that in some systems of accountings in shipyards items of material will be charged to material and in others they might be charged to operating expense?

A. That is quite right.

Q. Isn't it also true that in some cases fabricated material, that is the labor on the fabrication is charged as an item of material whereas in other systems the cost accounting is carried on so that the material and labor are charged separately?

A. There is a lot of work that is done in what

you call the manufacturing job order system and in which a lot of material is put through and the goods manufactured and put into store and finally charged up as materials, where in other plants it is charged out as material, labor and overhead.

Q. So that if you wanted to get as accurate an approach to this question as you could it would be desirable to know something about the cost accounting methods in the particular yard that you were using, wouldn't it?

A. The cost distribution.

Q. Did you know anything about the cost distribution in other yards than Fore River?

A. No, sir.

Q. Your letter of December 19th, in which you submitted proposals, says that the 9100 ton tankers which you proposed to build at Fore River were to be in general duplicates of Hulls 268 and 269 commandeered by the Emergency Fleet Corporation on August 3, 1917?

A. Yes, sir.

Q. Why didn't you take those boats as the basis of your estimates?

A. They were not anywhere near completed.

Q. Were they duplicates of 253 and 254?

A. Substantially so, yes, sir.

Q. What was the difference?

A. Probably some difference in the cargo handling system.

Q. Can you give us any idea which was the most expensive type of boat to build, 253 and 254 or 268 and 269?

A. Having looked at the final costs of 268 and 269, as compared with 253 and 254, I would say 268 and 269 would cost more.

Q. Cost more to build?

A. Yes, sir.

Q. Would it be a substantial item?

A. No.

Q. So that, substantially, when you were basing your figures on 253 and 254 you were estimating on about the type of boat that you contracted to furnish?

A. Yes, sir.

Q. You developed your factor of increase on Job 12 solely by reference to the factor of increase on plates, didn't you?

A. Yes, sir.

Q. And Mr. Brown this morning called your attention to the testimony given before Mr. Roberts at the last hearing and he stopped reading from your testimony at a point which left the impression that you knew that by using the factor based on plates alone rather than a composite factor based on plates and shapes, you had over-estimated or reached a figure some $33,000. in excess of what it would have been if you had used a composite factor?

A. Yes, sir.

Q. I want to read you a little bit more of your testimony there following what Mr. Brown read on page 182. I asked you, "Did you make any calculation or otherwise of the amount or do you simply mean", and then you broke in, "I mean it would be something in excess if these prices remained, and when Mr. Brown asked you whether you knew the figure was something like $36,000. and your answer was that, "No, I don't know whether it was $37,000. or $35,000. or $30,000. but I knew it would be an amount"—you so testified, didn't you?

A. Yes, sir.

Q. And is that a fact that you knew as a result of developing a factor on plates alone instead of a composite factor based on shapes and plates that that figure was more than it would have been?

A. Yes, sir.

Q. Why then didn't you develop a separate factor for plates and shapes or a composite factor representing plates and shapes?

A. Plates were the largest amount in the job and when we developed the factor of increase on the other items we did not take in the increase on plates and shapes which would be utilized in jobs other than Job 12, which amounted to quite an appreciable amount, and it was figured that by taking the plates alone and using that as your factor you would have a substantial offset by taking the average commodity prices on the other materials and absorbing the increase on the plate and shapes therein.

Q. In other words your factor of increase on material other than Job 12 was 1.75?

A. Yes.

Q. It was less than your factor of increase on plates or plates and shapes?

A. Yes.

Q. And a substantial part of the material other than went in Job 12 is made up of plates and shapes, is that right?

A. It is.

Q. That is fabricated from plates and shapes?

A. Yes, sir.

Q. So that to the extent to which material other than that in job 12 was being fabricated from plates

and shapes, your factor of increase there of 1.75 was too low?

A. Yes, sir.

Q. The bulk of your material on Job 12 was plates?

A. That is the largest portion of the material on Job 12.

Q. And next to that comes shapes?

A. Yes.

Q. And next to that comes rivets, I think?

A. Yes, sir.

Q. Now your factor of increase on shapes would have been less than your factor on plates?

A. Yes, sir.

Q. What about your factor on rivets?

A. I think that is higher.

Q. There was a bigger spread, wasn't there, between the pre-war prices on rivets and the War Industries Board prices on rivets than there was on plates?

A. I think that is right.

Q. Your factor of increase would have been higher?

A. Yes.

Q. So that, as you said in the hearing before Mr. Roberts, that while you realized that by using the factor developed from plates alone, assuming that the price of shapes and the price of plates remained relatively the same throughout the period of construction, that your estimate would have been higher if you had taken the composite figure, that in view of the fact that the price on plates before the War Industries Board had fixed any price was higher than the price on shapes, you regarded your plate price as a better barometer of prices generally than

your shape price or a composite price; is that correct?

A. I should say that would be substantially right.

Q. Now at the time you were making up these estimates you were estimating the cost over the period of the construction, weren't you?

A. Yes.

Q. And how long would you estimate the period of construction to be?

A. I think our first program covered 18 months, something like that.

Q. And of course nobody at that time foresaw the termination of the War within that period?

A. That is right.

Q. And under your contracts while you had protection against increase in wages you had no protection against increase in transportation cost, did you?

A. No, sir.

Q. And you had no protection against increase in material costs?

A. That is right.

Q. Now you did, however, base your prices, so far as material costs were concerned in Job 12, on the War Industries Board price current in November, 1917?

A. Yes, sir.

Q. And yet that price held good only until January of 1918?

A. Yes, sir.

Q. And then was extended only until April?

A. Yes, sir.

Q. And was subject to revision thereafter?

A. Yes, sir.

Q. Now, did you make any inquiry as to what the trend of plate prices was apt to be, if there was to be any change?

A. Yes, sir.

Q. Of whom did you inquire?

A. Mr. Blakely who was the head of the structural steel department of the Bethlehem Company.

Q. What was the information you got?

A. The information I got from him was that the trend would be up rather than down.

Q. How did you arrive at your delivered price from the base price?

A. By adding the freight and adding on an amount for inspection charges and probably there was a little margin. We allowed the price on steel 3.25 and freight was .24, which made it 3.49 and we allowed 10 cents a hundred on that to cover inspection charges and that also gave a little leeway on the price.

Q. What about an increase in freight? Did you have any allowance in there for an increase in freight?

A. Yes, that would cover anything.

Q. Including the increase in freight or increase in transportation charges that you had to charge?

A. We had that in case we had to do a lot of trucking and all that, and it was supposed to be an item that would help out.

Q. I think you have already explained what goes into material other than Job 12 and how you arrived at your factor of increase of 1.75 on that?

A. Yes, sir.

Q. I don't think that you have explained what is included in the item of plant operating expense

which you figured at 60 percent. of your direct labor cost. What is included in that item?

A. That item includes materials that are used or consumed in the construction of the vessels, in the operation of the plant and also covers labor which is utilized in the construction of the ship or the operation of the plant but is not direct labor used in the construction of the ship. The division of that would be about 40 per cent. on material and approximately 60 percent. on labor.

Q. Now give us some idea what kind of material is included in plant operating expense?

A. Coal, oil, maintenance parts of all kind. If you want to get down into detail, there is a lot of stationery, glue, sandpaper, hardware, lumber, miscellaneous steel materials, valves, pipes, ties, railroad irons, water that you purchase, electricity that you purchase, your insurance is charged up I think on your material end.

Q. I think that gives us a pretty good idea. In other words it is the miscellaneous material that is consumed in the construction of the ship that does not become part of the finished ship?

A. Or the operation of the plant.

Q. And it includes as an item of labor what we would ordinarily call indirect labor?

A. Well that is what I said, it is the labor used in the operation and management of your plant.

Q. Did you also include in your item of allowance for plant operating expense what was known as A. S. & G.?

A. Yes, sir.

Q. A. S. & G. and plant operating expense are not the same thing, are they?

A. No.

Q. But you included the one in the other?

A. Yes, sir.

Q. I think you told us yesterday that in normal times when your yard was functioning to capacity that your experience showed that your plant operating expense was 65 per cent. of your direct labor cost; is that right?

A. That was our total expense running about 80 per cent, capacity.

Q. In normal times running 80 per cent. capacity your plant operating expense, including A. S. & G., was about 65 per cent. of your direct labor?

A. Yes, sir.

Q. What do you mean by total expense?

A. This was prior to the Bethlehem taking over the plant.

Q. I understand but I want to get a comparison between the same things. You have included in your allowance for plant operating expense certain items?

A. Yes, sir.

Q. And you figured that at 60 per cent. of the direct labor cost?

A. Yes, sir.

Q. Now I want to find out what your experience had been as to the relation between the cost of those same items as applied to your direct labor cost in normal times with your plant operating at 80 per cent. capacity?

A. My recollection of it was it was around 65 per cent., taking the whole business, but I will state that that had a rapid, continuing rise right along.

Q. So that if you had taken the year, we will say of 1917, or the year preceding the preparation of these estimates, would it have run more or less than 65 per cent.?

A. Much more.

Q. Now, in taking a figure of 60 per cent. of the direct labor expense to represent a reasonable allowance of plant operating expense, did you take into consideration that there would be economies in operation due to the fact that you would be working on the same type of vessel, that you would be working to the full capacity of your yards, that you would be probably working overtime? Did you have those factors in consideration?

A. The factors that you are going to work an increase of force about four times increase, of course, don't mean that you had to increase all your overhead in proportion to that, but you did have to increase a considerable amount, so it became a matter of judgment more than anything else as to what you would use as you had to have certain factors which gave you a reason for the adoption of a certain figure.

Q. Will you tell us what factors you did take into consideration in forming your judgment of what was a reasonable allowance?

A. I don't believe that I took anything more in consideration than merely the consideration of increase of forces, I mean the increase in the amount of labor and in relation to superintendence and so forth. Of course you had no selling expense; your administrative charges would not go up in proportion to your increased labor roll.

Q. Taking those factors into consideration did you think that an allowance of 60 per cent. of direct labor cost was a reasonable allowance?

A. Yes, sir.

Q. Assuming the conditions as you foresaw them?

A. Yes, sir.

Q. And the figure which you arrived at by adding together your estimated cost of material and labor and plant operating expense you added a flat 10 per cent., didn't you?

A. Yes, sir.

Q. And on your chart you show that?

A. Yes, sir.

Q. And your chart says, "Plus 10 per cent. contingence"?

A. Yes, sir.

Q. You told us yesterday I think that included in that 10 per cent allowance was an allowance for hotel equipment which was ordinarily supplied by the owner and also for armed guard and war zone equipment?

A. Yes, sir.

Q. Did you know what those figures were or what proper allowances were for those items at the time you made up your estimates?

A. No, sir.

Q. Where did you get that figure for war zone equipment and armed guard equipment?

A. Mr. Bowles.

Q. Was that before or after you had made up your chart?

A. After.

Q. Was it before you had submitted your proposal on December 19th?

A. Yes, I think it was.

Q. Where did you get your figures for hotel equipment?

A. Well we had a pretty general idea of what it cost for hotel equipment on board a ship and I merely said $15,000. It might be $13,000 or it might

be $17,000., and I didn't consider it at the time we were making the figures.

Q. But when you gave us the amount which is intended as an allowance to represent those items in your 10 percent. you did not want us to understand that you figured those amounts at the time you were making up your estimate and then added enough over to make up the 10 per cent.?

A. No, sir.

Q. But you allowed your 10 per cent. and later got a figure from Admiral Bowles as to the proper allowance for war zone equipment and either at the time or later got an approximate idea of what your hotel equipment would cost?

A. Yes, sir.

Q. And those items you now tell us are included in your item of 10 percent.?

A. That is right.

Q. And the balance really represents allowance for other contingencies?

A. Yes.

BY THE MASTER:

Q. Let me clear it up for my own mind. As I understand the 10 per cent. was an arbitrary percentage that you used in fixing the total cost on your chart?

A. Yes, sir.

Q. But before you knew actually what the war zone equipment cost, armed guard equipment cost and the actual hotel equipment might be?

A. Yes.

Q. You subsequently found out what those actual or approximate figures in the total were?

A. Yes, sir.

Q. But the 10 per cent. which you added to the

other known figures that you had was inclusive of all of these items?

A. Yes, sir.

Q. But not inclusive of the detail that you subsequently developed; that is correct?

A. That is correct.

BY MR. EVANS:

Q. What was the figure that Admiral Bowles gave you for war zone equipment?

A. The first figure he gave me was $10 a ton.

Q. Regardless of size?

A. Regardless of size and I questioned that and then afterwards he said a vessel of around 10,000 tons would be about $75,000.

Q. And that is where you got the figures that you gave?

A. Yes.

Q. I mean you are using Admiral Bowles's figure?

A. Yes.

Q. And that is the figure which you now use as the allowance for war zoning equipment?

A. Yes.

Q. What was the necessity of having another tanker in order to develop your cost?

A. Well that would give you a check and a drift on the curve and it would take in and develop up to what the other plant would indicate.

Q. Which was really the basis of your estimate, the 9100 ton tanker or the 14,950 ton tanker?

A. The 9100 ton tanker.

Q. And what bearing would any variation in the figures that you derived after analysis of the larger tanker have one way or the other on the cost of boats between 10,000 tons and 7500 tons?

A. Well if the price was high it would have

given you a little higher price above the 10,000 ton line and lower price below the 10,000 ton line and if it was lower it would be vice versa.

Q. In other words if you got that spot and if the figure that you developed on your larger boat was higher than it should be the result would be that for prices taken off of that curve for any boat above 10,000 tons your estimate of cost would be higher than it should be?

A. Yes, sir.

Q. And on any boat below 10,000 tons your figure would be lower than it should be?

A. Yes, sir.

Q. And was it necessary for the purpose of getting a reasonably accurate approximate cost within that range that you should know the cost of a 14,950 ton tanker with the same accuracy that you developed the cost of the 9100 ton tanker?

A. No.

Q. Why is that?

A. Well, just for the reason that you have stated, and another feature, of course, that you must recall, that with all of the unsettled conditions you have in an approximation of what you were aiming to give was a price within a proper range of cost. You did not expect to get within 5 or 10 per cent. because that is as close as you can get under normal conditions and in these unusual conditions you don't know where you were going to get.

Q. In addition to that, as I understand it, if you were bidding on a 15,000 ton tanker then any error in your estimate on 15,000 ton would be material?

A. Yes, sir.

Q. But if you were bidding on a 9100 ton tanker it makes no difference?

A. Yes.

Q. Or if you are bidding, rather, on a 10,000 ton tanker it makes no difference?

A. Well the percentage is so small that it is immaterial.

Q. Why did you take 158 and 159 to arrive at another spot on your chart?

A. I took that because they were constructed practically during the same period, contracted for substantially at the same time, checked it off and found that the light weight of the ship cost about the same in dollars per ton, a little higher in the material and a little lower in the labor, but the combined showed about the same. That seemed to be an indication that it would be a fair comparison to make.

Q. I was going to ask you why you felt justified in applying the same factors of increase to the returned cost of 158 and 159 as you did to 253 and 254?

A. I think tha what I gave you before explained that, because your material cost ran pretty close the same, within a reasonable percentage, and by simply applying the factors one part of it would be high and the other part of it necessarily must be low, so that you would have to change your factors of the two.

Q. In other words your cost per ton of material was practically the same?

A. As close as you could expect to get it.

Q. If it were a fact that the cost of material of Job 12 on 158 and 159 were higher than the cost of material in Job 12 on 253 and 254, but the total material cost was about the same; then it would necessarily mean that the reverse was true as to the cost of material other than in Job 12; is that right?

A. That is right.

Q. And if you had used a composite factor representing the factor of increase on all materials you would get the same result?

A. Yes, sir.

Q. So that one would balance the other if there was no error?

A. Yes, sir.

Q. Were they the same type of boats?

A. No, sir.

Q. What was the difference?

A. The 9100 ton tanker was a two-deck, 3-island tanker fitted with a single screw machinery, and the 158 and 159 was what is termed a shelter deck type of steamer fitted with twin screws.

Q. Does that make any difference in cost?

A. Yes, sir.

Q. Did you take that into consideration at the time you were making your estimates?

A. It was considered because you realize that the shelter deck tanker if plotted on the dead weight would be less in cost. There would be some additional actual cost on the shelter deck as compared with the 3-island to compensate for your difference in dead weight.

Q. When I asked whether you considered it I really meant to ask whether you made any definite allowance to compensate for the difference in type of vessel?

A. No, sir.

Q. But you were conscious of it?

A. Yes, sir.

Q. And that difference was commented upon at the last trial by the Government expert, was it not?

A. Yes, sir.

Q. And afterwards you explained that by ref-

erence to some boats that had been built in some other yard, didn't you?

A. I don't think that particularly.

Q. At any rate have you since the last hearing made any calculation to show the relation between the cost per dead weight ton of a boat such as 158 and 159, which I think you called a shelter deck type of boat?

A. Yes.

Q. And boats such as 253 and 254 which you called the 3-island type?

A. Yes.

Q. What does that show generally as to the relative cost per dead weight ton of the two types of boat? Which cost the more per dead weight ton?

A. The 3-island type.

Q. So that when you were using a shelter deck type of boat for the purpose of comparison you were using a boat which is of a cheaper type of construction per dead weight ton than the type of boat on which your estimate was submitted, is that right?

A. Yes, sir.

Q. And you have the details of that, have you, showing how your allowance would be made up on a comparative basis?

A. Yes, but I haven't it with me.

Q. But you have worked it up?

A. I have worked it up that you can get a comparison.

(Adjourned to 10 o'clock a. m. April 1, 1931.)

MR. EVANS: Mr. Mason, in reading over the transcript of the first day's testimony I found what appear to me to be some errors in the transcript, and I thought if I called attention to them we might agree that they are errors, or if we cannot agree I will ask Mr. Brown to clear them up.

The first one of which I have any note is on page 32, in the question which begins a little below the middle of the page, beginning "Can you tell us whether the heading", I think that should read "November, 1917, plus material plus wage plus 10 per cent. contingent".

THE MASTER: I think we can agree that that is the way it appears on the chart.

MR. BROWN: That is agreed to.

MR. EVANS: The next correction I have is on page 36. In the second question on that page, referring to the line which appears on the chart, instead of "increase per ton D. W. January or June, 1922", it should be "hours per ton D. W.", or at least it so appears on the chart. I suppose we may agree to that.

MR. BROWN: Yes.

THE MASTER: That is agreed to.

MR. EVANS: The next correction is at page 44, the question which I asked which here reads "Well, they are not in this material?" My recollection is that the question was "They are not included in Job 12". If there is any doubt about that, I would like to correct it.

MR. BROWN: I think that is correct.

MR. EVANS: The next one is on page 57.

The last answer on that page reads: "Yes. The freight rate on the West Coast was fifty cents per ton higher than it was on the East Coast". I think that should read fifty cents per hundredweight. Is that correct?

MR. BROWN: Yes.

MR. EVANS: Then that correction is agreed to. The next is at page 114. In the fourth line from the bottom of that page, where Mr. Brown was reading from the testimony in the previous hearing, it is quoted here, "A. By the ordinary prices between business men". I think that should read "By the ordinary process."

THE MASTER: That is agreed to.

MR. EVANS: The next correction is one that I think I will have to have Mr. Brown clear up.

MR. HALLETT: May I suggest one other correction that I have noticed? That is on page 42. The last question on the page does not seem to be answered and I imagine that a "Yes" should be in there.

THE MASTER: The answer "Yes" is correct to that.

MR. HALLETT: On page 37 the answer $1,745,000"; I think Mr. Brown answered that $1,750,000 or $1,745,000, because in his answer at the bottom of the page he said "Around one seventy-four and a half or one seventy-five". I do not know that it makes any difference.

MR. EVANS: I do not know that it makes any difference, but I am perfectly willing to correct it in that way.

MR. HALLETT: On page 31, in the first question it says "Submit with respect to tank and cargo shipped". That should read "ships".

THE MASTER: That is agreed to.

MR. EVANS: I want to refer to Mr. Brown's answer which appears at the top of page 141, which, as you read it, is hardly intelligible, and I think I will have to clear that up by asking Mr. Brown the same question.

HARRY BROWN, recalled, cross examination resumed.

BY MR. EVANS:

Q. Mr. Brown, at the first day's hearing you were asked by the Master whether you had made any studies showing the actual loss of efficiency on labor as compared with vessels built at one time as contrasted with vessels built at some other time, and I thought your answer then was perfectly clear but as it reads in the transcript it is not very clear. Will you answer that question again?

A. I have made such an investigation and I found that the loss in efficiency up to the Armistice was in excess of the loss of efficiency that I used in the preparation of the figures to estimate the cost.

Q. You used 30 per cent.?

A. 30 per cent.

Q. Increase in inefficiency?

A. Yes, sir.

MR. ROBISON: Increase in cost.

BY MR. EVANS:

Q. Increase in labor cost due to loss of efficiency?

A. Yes, sir.

Q. Between what periods did you make your comparison of actual loss of efficiency?

A. Between the period of the construction of hulls 253 and 254—

Q. Which were your base ships?

A. Which were the base ships, yes, sir.

Q. And what other ships?

A. 268 and 269.

Q. And what were they, requisition ships?

A. They were requisition ships.

Q. Completed when; sometime after the Armistice?

A. That is my recollection, and they were ships that were substantially a duplicate of 253 and 254, so a comparison could be made.

Q. Where those latter ships built at Fore River?

A. Yes, sir.

Q. You apparently stated, in your examination in chief, that when you and Powell were getting up figures for the proposal which later took the form of the letter of December 19th, you arrived at your figure for a 7400-ton East Coast cargo ship by taking the cost which you developed from your chart for a 7500-ton East Coast tanker and deducting 15 per cent. Is that what you meant to say?

A. Well, that would hardly be complete; and then making allowance for the difference in the dead weight tonnage, which was rather small.

Q. Is it not a fact that what you did was to take your price as shown by your curve for a 7400-ton tanker and then allow your differential? What I am driving at is, did you put a figure in for a 7400-ton cargo boat which really represented a figure for a 7500-ton cargo boat?

A. No, sir.

Q. Then am I right in saying that what you did

was to take your price from your curve for a 7400-ton tanker, not a 7500-ton tanker? It would be very little different, I understand that.

A. There is a little difference. I do not know just the method of procedure that was adopted on it, but I know, while it was based on the 7500-ton tanker, there was an allowance made for the difference in the size of the ship.

Q. As well as for the fact that one was a cargo boat and the other was a tanker?

A. Yes.

Q. I do not know whether I asked you yesterday why instead of going to Sparrows Point to get a larger boat for the purpose of comparison with your 9100-ton tanker at Fore River, you did not take a larger tanker that you built at Fore River, where you were familiar with costs?

A. We had not built any.

Q. You had not built any?

A. No, sir.

Q. So there was no larger vessel which you had built at Fore River, which you could use as a fair basis of comparison?

A. No, sir.

Q. Yesterday you started to tell us something about the difference in the type of vessel represented by 158 and 159 and 253 and 254, and you explained that 158 and 159 were shelter-deck boats and 253 and 254 were three-island type boats?

A. Yes, sir.

Q. And your proposals were based on tankers of the three-island type?

A. Yes, sir.

Q. Was there any other difference between 158 and 159 and the type of boat that you proposed to build?

A. Yes, sir.

Q. What was that?

A. One was a twin-screw boat and the other was a single-screw boat.

Q. Which was the twin-screw?

A. The larger vessel.

Q. That is, 158 and 159?

A. Yes, sir.

Q. Whereas you were proposing to build single screws?

A. Yes, sir.

Q. And I suppose that a twin-screw boat is more expensive than a single-screw boat?

A. Yes, sir.

Q. Am I correct in undertsanding that in a shelter-deck type of boat, for the same light weight you get a greater dead weight?

A. Yes, sir.

Q. Than in the case of a three-island type of boat?

A. Yes, sir.

Q. And is that because you can sink your boat lower in the water and get a deeper draft?

A. Yes, sir.

Q. And the result of that, as I understand it, is that for the same light weight of material you will get more dead weight in a shelter-deck type of boat than in a three-island type of boat?

A. Yes, sir.

Q. And therefore, if the light weight cost of the two boats is the same, the dead weight cost of the three-island type boat will be higher per ton?

A. Yes, sir.

Q. Because you get less dead weight per light weight in your three-island type than you do in your shelter-deck type?

A. Yes, sir.

Q. Was that difference more than enough to offset the fact that the Sparrows Point boat was a twin-screw boat?

A. No, sir.

Q. It was not more than enough to offset it?

A. No, sir.

Q. Do you mean by that that the net result was that, making proper adjustments by reason of the fact that one was a twin screw and the other was a single screw, and one was shelter-deck and the other was three-island type, the Sparrows Point boat was a more expensive type of boat to construct per dead weight ton?

A. No, it was less per dead weight ton.

Q. Then you misunderstood my question. I asked whether the difference in cost due to the fact that one was a shelter-deck type and the other was a three-island type of boat, was more or less than enough to offset the difference in cost due to the fact that one was twin screw and the other was single screw. Perhaps I do not make myself clear.

A. Do you mean to ask me if the increased cost of a twin-screw boat will be sufficient to offset the difference in the dead weight?

Q. You are putting it just the other way, but you answer that question.

A. The increased cost due to twin screws on a shelter-deck boat would not be sufficient to offset the difference in the dead weight.

Q. Since you have been working on this case, have you discovered that there were any errors in the figures that were supplied to you by your Accounting Department on either 253 and 4 or 158 and 9?

A. Yes, sir.

Q. Take 253 and 4; what error have you discovered there?

A. I have not discovered any error in 253 and 4.

Q. I think at the last hearing attention was called to the fact that in the total cost as it was reported to you by your Accounting Department, there was included an item of extras; is that correct?

A. Yes, sir.

Q. How much was that?

A. As I recall it, somewhere around $23,000.

Q. When did you first learn that?

A. At the previous trial.

Q. At the previous trial, when Mr. Sanford called it to your attention or mentioned it?

A. Yes, sir.

Q. And Mr. Sanford was one of the Government witnesses?

A. Yes, sir.

Q. Following Mr. Sanford's testimony, did you make an investigation to find out whether that were a fact, that some $23,000, if I have the figure correct—

A. Made an investigation to find out what it represented, yes, sir.

Q. And what did it represent?

A. It represented the additional amount that was paid to Bethlehem for over-time.

Q. For over-time?

A. Yes, sir.

Q. So it is a labor item, is it?

A. Yes, sir.

Q. If you had known that at the time you prepared your graph in 1917, how would it have affected your figures?

A. It would not have affected them at all.

Q. Why not?

A. Because that was an over-time that was paid

by the owner on the basis of a coefficient that was agreed upon between the owner and the builder, and it does not represent that there is $23,000 involved in the cost of the vessel, but it represents that it is $23,000 divided by the coefficient that was agreed upon, practically, so that the only thing that is in the cost of the ship is due to the actual over-time labor that was paid on the ship, and that was a part of the cost of the ship, but not reflected by $23,000.

Q. But did you not have that $23,000 in your return cost of labor?

A. No, that is the amount that was paid by the owner and that is added to the contract price, but that does not mean that the cost of the ship had $22,000 in it that did not belong to it. It was only a small amount of that that was actually paid by the builder and charged in as cost of the vessel.

MR. BROWN: Mr. Master, has this item been clearly identified in your mind? In other words, it relates to Changes and Extras, does it not?

MR. EVANS: Yes.

MR. BROWN: Has that been made clear? I am not sure whether it has or not, because there are several mistakes that have been referred to and I would like each clearly identified, so that the Master will not think this relates to one that it is not intended to relate to. I thought it might be clarified by a reference to the particular item.

THE MASTER: Mr. Evans is referring to the chart and to a base figure that entered into the making of the chart.

MR. BROWN: As I understand it, he is referring to a certain item which appears in the Exhibit G-6, and which can be identified by reference to that exhibit.

THE MASTER: I understood he was referring to the figures that were given to the witness, Mr. Brown, from the Accounting Department of the Fore River Shipbuilding plant, as the basis upon which he made his chart, and whether or not in the giving of certain figures, which have been referred to recently as Extras, there was included an item which he used which produced an improper result in his chart.

MR. BROWN: Could we not earmark that item?

BY MR. EVANS:

Q. I refer you to Exhibit G-6 and I call your attention to the item which appears under the heading "Fore River Plant No. 253"—that is Hull 253, is it?

A. Yes, sir.

Q. To the item of $28,642.90, which is listed as Changes and Extras under the heading Selling Value. Is that the item to which you have reference?

A. Yes, sir.

Q. And you say that that is an amount which the owner paid?

A. Yes, sir.

Q. But which was not included in your cost, Fore River's cost?

A. Only the amount that was paid to labor for working over-time.

Q. So that would you say that, if that fact had been called to your attention at the time you made

this graph, it would or would not have made any change in the figure which you allowed as representing the direct labor cost on 253?

A. It would not.

Q. Have you discovered any other errors in the figures that were furnished you as representing the cost on 253?

A. No, sir.

Q. Have you discovered any errors in the figures that were furnished you as representing the cost on 158 and 9?

A. Yes, sir.

Q. What was that?

A. That was a figure that was included to cover possible charges during the guarantee period of the ships.

Q. Just what do you mean by that?

A. I mean when you contract to build a ship there is usually included in the contract a clause covering the replacement of material and workmanship that may prove defective during a period after delivery.

Q. Then you mean that it was a reserve item set up on Bethlehem's books to take care of any liability under their guarantee?

A. Yes, sir.

Q. And that guarantee runs for how long?

A. It varies with different ships.

Q. Do you know how long it ran on these ships?

A. No, sir.

MR. BROWN: Is not that shown by the contract?

MR. EVANS: I suppose it is, yes.

BY MR. EVANS:

Q. Was that, in fact, an item of cost?

A. No, sir.

Q. It was, however, set up on the books as an item of cost during that guarantee period?

A. I understand so.

Q. Was it included in the cost as reported to you by the Sparrows Point Accounting Department?

A. Yes, sir.

Q. When did you find that that was a reserve rather than an actual item of cost?

A. After I came back to Bethlehem in connection with this suit.

Q. If you had been informed as to that item at the time you made up your graph in 1917, and if you had known that there were to be no charges against that reserve item, would that have made any change in the figures which you developed?

A. Yes, sir.

Q. With respect to 158 and 9?

A. Yes, sir.

Q. What factor would it have affected?

A. The factor of the material cost.

Q. And what was the amount of that item, do you recall?

A. Around $30,000.

Q. And what material costs would be affected: your material in Job 12 or other material?

A. Other material.

Q. To which you applied a factor of increase of 1.75?

A. Yes.

Q. So that by including that item as an actual item of material cost and applying your 1.75 factor to it, you made an error of how much?

A. If it was exactly $30,000 it was 1.75 multiplied by $30,000.

Q. Which would be what? You are a better mathametician than I am.

A. That would be $52,500.

Q. Do you know of any other error in the figures that were reported to you by the Accounting Department?

A. No, sir.

Q. You said, I think, that when Bethlehem Shipbuilding Corporation was organized there was an estimating department formed; is that right?

A. Yes, sir.

Q. And I think Mr. Schulze was in charge of that estimating department?

A. Yes, sir.

Q. Were his headquarters at Bethlehem?

A. Yes, sir.

Q. During the months of November and December, 1917, what was Schulze doing? Was he doing any estimating?

A. During those months he was trying to get his office prepared for handling estimates.

Q. You mean he was organizing his department?

A. Yes, sir.

Q. It was a new department?

A. Yes, sir.

Q. Do you know whether he was, in fact, doing any estimating during that period?

A. Probably on changes.

Q. Probably on changes?

A. Yes, sir.

Q. On requisition ships?

A. And navy ships.

Q. Was he doing any estimating on new work?

A. No, sir.

Q. Particularly, did he do any estimating in connection with the Emergency Fleet ships?

A. No, sir.

Q. Except possibly in connection with changes and extras on requisition boats?

A. Yes, sir.

Q. When did the Estimating Department under Schulze first undertake any estimates for new boats to be built?

A. I think the first estimates that were prepared were on the troop ships.

Q. And when was that?

A. Oh, I don't recall exactly. It was several months later.

Q. Is that the contract for six troop ships to be built at Sparrows Point?

A. Yes, sir.

Q. I call your attention to a letter or a memorandum, which appears at page 494 of the Documentary Evidence, which was offered at the last trial as Exhibit G-6, in which it appears that the contract for those ships was awarded by the Fleet Corporation on October 9, 1918. Does that enable you to fix approximately the date when Schulze and his department made their estimates?

A. That does not fix it in my mind, because that was a rather involved situation. The estimate was first prepared for the construction of twenty troop ships to be built at a new plant to be erected on the West Coast and the original estimate was based upon construction on the West Coast, and, while this letter is dated October 9th and refers to Sparrows Point, it might have been several months prior to October when the original estimate was prepared.

Q. You would say it was some time during the middle or the latter part of 1918?

A. If it is important you can get it accurately.

Q. All right. But up until that time, as I understand it, Schulze and his Estimating Department had made no estimates for new ships to be constructed; is that right?

A. Yes, sir.

Q. And what estimating they were doing was on the cost of changes and extras on requisition ships and navy ships?

A. That is my recollection.

Q. Yesterday Government counsel called your attention to your letter to the Fleet Corporation of April 18, 1918, Exhibit G-132, and particularly to your proposal to construct three cargo vessels of about 4800 tons dead weight, to be built at the Moore plant?

A. Yes, sir.

Q. You say in that letter: "The price, however, to be determined after we have had an opportunity to prepare plans and specifications and estimates of cost." Why was it necessary to await the preparation of plans and estimates before making an estimate of cost on those 4800-ton boats, if you had your chart, as you say you had, from which you could take the approximate cost of any type or size of boat?

A. My recollection on that particular item is very hazy and I cannot state just definitely why that was, but we had no corresponding vessels of 4800 tons and just where the 4800 tons came from is not clear. The only explanation that I can give for that is that it must have been contemplated that it would have

been some special type of vessel and not of the standard.

Q. Did you ever build those boats?

A. No, sir.

Q. Had you ever built any 4800-ton cargo boats?

A. I think not.

Q. I notice that in every other case your proposal, not only in that letter but in every other letter where you made proposals, your proposal says that the boat to be constructed is to be a duplicate of some other boat of the same size, which you either had constructed or were constructing in one of your yards; is that correct?

A. Yes, sir.

Q. Whereas in the case of the 4800-ton boats you had no such duplicate?

A. That is right.

Q. Upon which to submit a proposal?

A. Yes, sir.

Q. And of course, therefore, no plans and specifications?

A. No, sir.

Q. Now I want to ask you a little bit more fully than Mr. Brown did how you and Mr. Powell arrived at the estimates of cost which appear in your proposal of December 19, 1917, G-109. The letter says that the figures are based upon the cost of a 10,000-ton vessel and you said that was according to your recollection.

A. Yes, sir.

Q. And that was the figure which you carried in your mind as a figure that you developed in your graph which you had in Bethlehem?

A. Yes, sir.

Q. $2,000,000, or $200 a ton?

A. Yes, sir.

Q. For an East Coast tanker of 10,000 tons?

A. Yes, sir.

Q. And you have explained how you arrived at your allowance of five per cent. to represent the additional cost of a West Coast tanker of the same size?

A. Yes, sir.

Q. And I think you explained your reason for submitting an average price for East and West Coast vessels?

A. Yes, sir.

Q. Because that had been your practice with the Navy?

A. Yes, sir.

Q. That was your reason, was it not, that the Navy made no distinction between the cost on an East Coast yard and the cost on a West Coast yard; is that right? I mean your price to the Navy was the same regardless of whether you were building destroyers on the East Coast or on the West Coast?

A. Yes, sir.

Q. It was an average price?

A. Yes, sir.

Q. And you assumed that the Fleet Corporation would follow that policy and hold you to the same price on the West Coast as on the East Coast?

A. Yes, sir.

Q. And that was your reason for submitting a price that was an average between the two?

A. Yes, sir.

Q. If you take five boats, 10,000-ton tankers, on the West Coast, which is what you were proposing, and three 10,000-ton tankers on the East Coast, and you take the West Coast boats at $210 a ton and the

East Coast boats at $200 a ton, you will get an average of $206 a ton; is not that right?

A. Yes, sir.

Q. And that, as I understand it, is the figure which you had developed from your cost which you developed in Bethlehem in connection with the preparation of this chart?

A. Yes, sir.

Q. Now I observe, however, that the price which Powell quoted, instead of being $206 a ton for a 10,000-ton tanker, is in round figures $216 a ton, or $10 a ton more?

A. Yes, sir.

Q. Can you tell us how that difference is accounted for? I mean if you started with your base of $206, how did you arrive or how did Powell arrive at a price of $216?

A. By adding $10 a ton to it.

Q. Can you tell us now why he added $10 a ton?

A. The only reason that I know, that he did not think the price was high enough, or that there were other conditions that he had in mind that I did not have in mind, and he was the man to finally determine what was going to be done.

MR. BROWN: Mr. Brown, if I may interrupt you, I do not think the Master wants you to guess. I think it is perfectly proper for you to state if Mr. Powell stated his reasons for doing this, but I do not think you should be permitted to speculate as to what Mr. Powell might have had in his mind.

BY MR. EVANS:

Q. Have you any definite recollection as to how that $10 a ton came into the picture?

A. No.

Q. Can you tell us whether it was the result of Mr. Powell developing entirely new costs of his own?

MR. BROWN: He has said he has no recollection. I do not think you should talk about putting words in the mouth of the witness. Go ahead, I do not object to it, but there are some limits even on cross examination.

BY MR. EVANS:

Q. Can you tell us whether it was the result of Mr. Powell developing an entirely new figure of his own?

A. You mean total figure?

Q. Yes, total figure.

A. A total figure of his own, yes.

Q. I am asking you whether it was the result of Mr. Powell putting down certain figures and developing an entirely new cost figure of his own?

A. He took the figures that I gave him and added $10 a ton to it.

Q. Yes, that is what I thought. In other words, he did not do, or attempt to do, what you had already done? He started with your figure, and, for some reason which you cannot recall, added $10 a ton?

A. Yes, sir.

Q. To your figures?

A. Yes, sir.

Q. But it was your figure which was the basis?

A. Yes, sir.

Q. This letter was not written in Washington, was it, this letter of December 19th?

A. No.

Q. Don't you recall that Mr. Powell said that he went to the Harlan plant?

A. Yes, sir.

Q. And wrote that letter the next day?

A. Yes, sir.

Q. Were you with him when he wrote the letter?

A. No, sir.

Q. Can you recall whether this breakdown to show the cost per ton was something that was discussed between you and Powell at your conference on the evening of December 18th, or whether that was something that Powell may have put in the letter when he went to Wilmington and dictated it at the Bethlehem office?

A. No, Mr. Powell made that breakdown while he was in Washington.

Q. While he was in Washington?

A. Yes, sir.

Q. So, then, you were familiar with his breakdown?

A. Yes, sir.

Q. I think you said that it was an arbitrary breakdown?

A. Yes, sir.

Q. Of the total cost figure?

A. Yes, sir.

Q. And you have told us how you arrived at the total cost figure?

A. Yes, sir.

Q. You said that you did not agree with him as to the allowance for Administrative, Selling and General Expense?

A. Yes, sir.

Q. Did you think that was too high or too low?

A. I thought that was too high.

Q. Did you agree with him as to the total cost being a reasonable figure?

A. Yes, sir.

Q. Therefore, if you agreed with him as to the total cost, but felt that his allowance for Administrative, Selling and General Expense was too high, then by the same token you must have thought that his allowance for Labor, Materials and Operating Expense was too low?

A. That would be the assumption, yes, sir.

Q. Is not that a fact?

A. Yes, sir, that is a fact.

Q. In other words, you did not disagree with him that the estimate of total cost which he submitted was a reasonable estimate, but you said, "If you are going to break that estimate down into so much for Labor, materials and Operating, so much for A. S. and G., etc., in the first place I think it is a mistake to do it, and in the second place if you are going to do it you haven't got your proportions in proper line."

MR. BROWN: Can he not remember what to say without your telling him every time? (To the witness) Will you accept that explanation which has been made for you by counsel?

BY MR. EVANS:

Q. Mr. Brown, will you answer my question, please?

MR. BROWN: Was it a question? I did not know that. (To the witness) That explanation is acceptable and relieves you of a lot of thinking, does it not, Mr. Brown?

MR. EVANS: Mr. Mason, I object to this. If there is any impropriety in my examination, let Mr. Brown object.

THE MASTER: I think it would be better to

make your objections, Mr. Brown, and I will rule on them as best I can.

BY MR. EVANS:

Q. We will withdraw that question and I will ask you what your criticism was of Powell's breakdown.

A. My criticism principally of Powell's breakdown was that he had an allowance in there of entirely too much in the division on the A. S. and G. His figures, of course, did not agree with my figures, because he had changed them and added to it, and I did not think it was good policy to make any breakdown, because I did not think that it meant anything to anybody.

Q. Did you think that his estimate of $2,181,600, as an average between the East and West Coast cost for a 10,100-ton tank vessel, was reasonable?

A. I said any figure within five or ten per cent. of what we had there would be reasonable; what we had in the chart.

Q. You have not told us yet how you arrived at your estimate for these seagoing tugs. Were they covered by your chart?

A. No, sir.

Q. Could you use your chart for that purpose?

A. No, sir.

Q. That was an entirely different type of ship, was it?

A. Yes, sir.

Q. Tell us how you arrived at that figure of $300,000 for seagoing tugs.

A. After obtaining the particulars of the tugs which the Shipping Board contemplated building, and which consisted merely of the dimensions of the tugs and the horsepower, we compared those with

some tugs that Mr. Powell had had experience with on the return cost at Cramp's Shipyard and some at Fore River, which had been built some years previous.

Q. Did you have those figures before you, or did you recall them?

A. Oh, no, we got the figures after we were given e particulars.

Q. What?

A. We obtained the total cost of those boats after we had gotten the particulars from the Fleet Corporation.

Q. When was that?

A. After we had been asked to put a bid in.

Q. That was on December 18th, was it not?

A. Oh, there was some talk, I think, of tugs before that, wasn't there?

Q. I am asking you for your recollection.

A. Well, I will tell you as nearly as I can get it. We either got the figures or had them some place, either had what the total costs of the tugs were or something of the kind, and all that was done was a comparison and a figure arrived at, which Mr. Powell submitted.

Q. You did not have any plans and specifications for those tugs?

A. No, sir.

Q. All you had, I think you said, was the over-all dimensions and horsepower?

A. Yes, sir.

Q. After you had submitted that proposal did you go back to Bethlehem? I do not mean right away.

A. Yes, sir.

Q. You were in Bethlehem between December 19th and January 3rd, were you not?

A. Yes, sir.

Q. And when you went back to Bethlehem, did you compare the prices which you had submitted in your proposal of December 19th, with the prices for those same types and sizes of vessels as you developed them on your graph that you had in Bethlehem?

A. Yes, sir.

Q. Did you take off a record of what the prices were for those particular types and sizes of vessels as developed from your graph?

A. Some time during that period, yes.

Q. What did you do with that memorandum? Did Mr. Powell have it?

A. It was prepared and given to Mr. Powell.

Q. It was prepared and given to Mr. Powell, so that when you went into your conference with the representatives of the Fleet Corporation on January 3, 1918, Mr. Powell had a memorandum showing what your chart prices were?

A. Yes, sir.

Q. Of the vessels which were included in your proposal of December 19th?

A. Yes, sir.

Q. You told us about Admiral Bowles and his experiences as a shipbuilder. What can you tell us about Mr. Radford and his experiences?

A. Mr. Radford was a graduate of Annapolis and took a post graduate course at the Massachusetts Institute of Technology, in Boston. He was then a naval constructor at the various Yards, or inspector, I should say, and I think he was at the Navy Department for some time. He resigned from the Navy Department and went into an industrial line and then

went with the Shipping Board, or Emergency Fleet Corporation, I don't know which you would call it.

Q. Was he regarded as a competent shipbuilder?

A. Yes, sir.

Q. Mr. Radford is still living, is he not?

A. So far as I know, yes, sir.

Q. He is located in New York, is he not?

A. I do not know, Sir.

Q. You recall that he testified at the last hearing?

A. Yes, sir.

Q. What other men were connected at that time with the contract or construction division of the Fleet Corporation, beside Bowles and Radford?

A. There was Mr. Coxe.

Q. Tell us who he was and what his qualifications were.

A. He was a graduate from the Naval Academy, also had a post graduate course. He was a naval constructor; resigned from the Navy, became a member of the firm of Coxe & Stevens in New York, Naval Architects, and was with the Fleet Corporation, and then went back to his firm in New York.

Q. That was after the War?

A. After the War.

Q. Do you know whether Mr. Coxe is still living?

A. I understand that he is. I do not know.

Q. Do you know whether he is, or has been until recently at least, in practice as a marine architect and engineer?

A. Up to the last that I heard, he has been in that business.

Q. Is he generally regarded as a competent man in his line?

A. He is.

Q. What other men were associated with the Fleet Corporation at that time?

A. There was a Mr. Theodore Ferris.

Q. Tell us about him.

A. He was a naval architect and a very successful one, located in New York; with the Fleet Corporation for a long period, and after the War went back in his own business in New York.

Q. Is Mr. Ferris still living?

A. So far as I know, he is.

Q. Do you know whether he is still in active practice?

A. He is.

Q. Where?

A. In New York.

Q. Is he regarded, and was he at that time regarded, as an able marine architect and engineer?

A. I should say he was regarded as one of the foremost in the country.

Q. Do you recall any other technical men who were connected with that department of the Fleet Corporation at that time?

A. No.

Q. Would you say that any one of those men was entirely competent to check your estimates of cost?

A. They were.

Q. Would you say that they were just as competent to check them as you were to make them?

A. They were.

Q. The Fleet Corporation was contracting with other Yards for tankers and cargo boats, was it not, about this same time?

A. They were contracting for many cargo boats,

but up to that time I do not think they had contracted for any tankers.

Q. They had taker over substantially the entire tonnage of the construction in the country, had they not?

A. Yes, sir.

Q. And in connection with that work they were periodically auditing costs at the several Yards, were they not?

A. I do not know.

Q. Don't you know that they were at Bethlehem?

A. The Shipping Board?

Q. Yes.

A. Not on requisition ships, no.

Q. Not on requisition ships?

A. No.

Q. You told us something about the conference which took place on January 3, 1918, between Admiral Bowles; Mr. Radford, Mr. Cuthell representing the Fleet Corporation, and you and Mr. Powell representing Bethlehem. Your relations with Admiral Bowles at that time were still friendly?

A. Yes, sir.

Q. And I think you told us yesterday that during your association with Admiral Bowles, particularly at the time that he was president of Fore River, he was entirely familiar with your method of working?

A. Yes, sir.

Q. And it had been his custom to supervise and check estimates that were made at the Fore River plant, had it not?

A. I don't know just what you mean by supervising and checking.

Q. What did he have to do with that?

A. What he had to do, after the estimates were prepared I would go in there and talk the matter over with him and show him in general what had been done and the way it had been done.

Q. So that he was familiar with it?

A. That was when we first started, and after while you get so you don't explain just how you do things to him.

Q. At any rate, he was familiar not only with your method of making estimates but with the estimates that had been made at Fore River?

A. Yes, sir.

Q. He criticized your estimates in your letter of December 19th as being too high, did he not?

A. Yes, sir.

Q. Did he ever suggest what he thought a proper figure would be for any of those boats at that meeting—except as he finally agreed on a figure, I mean?

MR. BROWN: Let us have that question—because I think it is a very important one—straightened out, if I may ask for it, because the witness has already testified, and I do not think he means to testify differently now, although I do not know, that Admiral Bowles never submitted any counter proposals whatsoever. I think the question, if you will read it, is misleading because the witness will not see exactly what is meant, because it indicates that Admiral Bowles did suggest the final prices, which is not true.

MR. EVANS: I did not mean any such suggestion. I will withdraw that question.

BY MR. EVANS:

Q. Admiral Bowles did object to the prices as originally submitted?

A. Yes, sir.

Q. And what did he say about them?

A. He said they were too high.

Q. Did he say anything else?

THE MASTER: Speaking now of the meeting of January 3rd?

MR. EVANS: Speaking of the meeting of January 3rd.

BY MR. EVANS:

Q. Particularly, did he say why they were too high or in what respect they were too high?

A. My recollection is that that is about the sum and substance of it, he just said they were too high.

Q. Did he suggest any figure which he thought would be a proper figure?

A. Not on those.

Q. He did on the stock ships?

A. Wait a minute. That is just what I was trying to get clear in my mind, between the two.

Q. We understand that on the stock ships he did suggest or had suggested a figure of $180 a ton?

A. Yes. Aside from that he did not suggest any figure.

BY MR. BROWN:

Q. Let us have that straightened out also. The figure of $180 which Admiral Bowles suggested, was a lump sum price for some of the stock ships; is that right?

A. That is correct.

BY MR. EVANS:

Q. I am talking about the vessels which are included in your proposal of December 19th, which does not include the stock ships?

A. Yes, sir.

Q. They were the vessels that were first under discussion in your conference of January 3rd, were they not?

A. Yes, sir.

Q. The stock ships came up later, at the conclusion of that conference?

A. Yes.

Q. Now I am asking you whether with respect to those vessels Admiral Bowles submitted any price of his own?

A. No, sir.

Q. Did he ask you how your estimates were made up?

A. No, sir.

Q. Did he ask you to justify your estimates in any way?

A. No, sir.

BY MR. BROWN:

Q. He just objected to them repeatedly and said they were too high?

A. Yes, sir.

Q. But did not ask you to justify them?

A. No, sir.

BY MR. EVANS:

Q. Until Powell finally came down to a figure which Bowles was willing to accept?

A. Well, I should put it this way; to a figure which Mr. Powell refused to go below.

Q. Well, then Bowles did accept it; is that right?

A. If you call his letter to Mr. Piez, his recommendation, an acceptance of them, yes.

Q. When you left the conference did you not understand that at the prices which Powell had finally worked down to had been accepted, at least so far as Bowles and Radford were concerned?

A. That was the agreed-upon prices, yes, sir.

BY MR. BROWN:

Q. In other words, as I understand you to testify, Admiral Bowles was forced to accept those prices because Mr. Powell would not go lower; is that correct?

MR. EVANS: I object to that question. That is not what he said.

MR. BROWN: I want to distinguish your testimony from Mr. Brown's, if possible, and I thought this would be an appropriate place to do it.

THE MASTER: That is what the Master will have to do, Mr. Brown. I do not think you need to assume that burden. I think it is perfectly clear.

BY THE MASTER:

Q. As I understand it, so you will see if I have distinguished it properly or not, Mr. Brown, there was at the January 3rd conference a discussion, in which the people whom you have named participated, concerning the figures for the vessels that were set forth in the proposal of December 19th, submitted by Mr. Powell; that is correct, is it not?

A. Yes, sir.

Q. And as to those figures for the different vessels that were mentioned in that letter, and speaking of those vessels only for the moment, Admiral Bowles objected to the figures and from time to time Mr. Powell reduced his figures until he reached a point below which he would not go?

A. That is right.

Q. And, in spite of further objections by Admiral Bowles, he did not go below that figure?

A. Yes, sir.

Q. And the conference stopped when that point was reached, in so far as further negotiations were concerned, and then, so far as you were concerned, you had no further discussion with Admiral Bowles with reference to further reductions; is that so?

A. That is right.

Q. That is my understanding of it. May I ask, for my own information, whether the letter of December 19th was before the conference in physical form during this discussion? Do you recall whether Admiral Bowles or whether Mr. Powell had before you for discussion the proposal letter of December 19th, when you were together on January 3rd?

A. Mr. Powell had it. I do not recall whether the other side had theirs or not.

Q. Was the letter itself made the basis for this discussion, or was it merely a verbal discussion concerning the figures that had been submitted, as you recall it?

A. I should say it centered around the figures that had been submitted, taken from the letter.

Q. And were they the total figures for the vessels, or was the breakdown that Mr. Powell put in the letter of December 19th a matter also of discussion?

A. I recall no discussion upon the breakdown, only on the total price.

BY MR. EVANS:

Q. You said at the conclusion of the negotiations Admiral Bowles asked you whether you thought those prices were fair and you told him, I think, that they were about as fair as you could arrive at under the circumstances?

A. To that effect.

Q. Did you honestly believe that they were as fair as could be arrived at under the circumstances?

A. I did.

Q. Did you feel that your method of estimating the approximate cost of these ships was as accurate a method as you could have used under the prevailing circumstances?

A. I did.

Q. Did you feel that the prices that you had derived as a result of the use of that method gave you a reasonable estimate of cost?

A. It gave me an estimate within a reasonable range, or within a range of the reasonable probable cost.

Q. About as accurate as could be expected under the uncertain conditions prevailing at the time?

A. Yes, sir.

Q. The prices at which the contract or contracts were awarded for the vessels which are included in your proposal of December 19th are substantially the prices which were developed from your chart and which you had given to Powell in preparation for the conference of January 3rd; is that right?

A. Yes, sir.

Q. With the exception of the ten per cent. which you have allowed there for contingencies, which as you have said included this allowance for hotel equipment, armed guard and war zone equipment, was there any contingent allowance in your figures?

A. In the ten per cent.?

Q. No, outside of that?

A. No, sir.

Q. The rest of the factors were factors that were developed, based upon your knowledge and experience and represented as accurately as you could

forecast the approximate cost of those vessels to be built during the estimated contract period; is that right?

A. Yes, sir.

Q. In other words, what I am driving at, is there any hidden gravy in there?

A. No, sir.

Q. Have you made a comparison of the cost of the vessels built by Bethlehem under what we call the Contract Ship Program, with the cost of vessels built for the Fleet Corporation by yards other than Bethlehem?

A. Yes, sir.

Q. And you tabulated the result of that comparison in an exhibit that you prepared?

A. Yes, sir.

Q. Which was offered at the last trial?

A. Yes, sir.

MR. EVANS: I ask the Master to mark for identification the exhibit which was offered in evidence at the last hearing as B-3, being a statement showing contract price, contract D. W. T., attained D. W. T., number of vessels completed and final price to the Government for vessels built under direct contracts by builders other than Bethlehem Shipbuilding Corporation, and may it be stated on the record that that is an exhibit which has been supplied to Bethlehem by the Fleet Corporation.

THE MASTER: It may so far as I am concerned.

MR. BROWN: I have no objection to its being offered even at this point, if Mr. Evans wishes.

MR. EVANS: That being so, I will offer it in evidence.

THE MASTER: Very well, I will mark it.

MR. BROWN: We admit that that exhibit was furnished to Bethlehem counsel by the Government.

BY MR. EVANS:

Q. Was your comparison based on the information which was supplied in this exhibit, which has been offered as B-3?

MR. BROWN: May I add a note to my admission on the record, that Exhibit B-3 was furnished by the Government to Bethlehem counsel as one of the documents to be exchanged for the chart which has been offered in evidence.

MR. EVANS: Do you not mean the only document which was to be exchanged for the chart?

MR. BROWN: I do not know whether there were others or not.

MR. EVANS: Do you not mean that that is the one document which was furnished by the Government in exchange for all of the documents which have been furnished to the Government, of which the chart is only one? Not that it makes any difference, but I do not want the Master to have any idea that the Government was selling its birthright for a mess of pottage, because they did not do any such thing.

THE MASTER: As I understand it, coun-

sel are going to ask the Master to value the relative advantage each got by the exchange of documents, and I do not think the Master proposes to do that.

MR. BROWN: I would merely like to note on the record, as long as all the rest of this is taken down, that the Government furnished Bethlehem with everything which Bethlehem had requested, in exchange for which Bethlehem, among other things, was to provide us with all the cost data which it had available and used in connection with its estimates.

MR. EVANS: If the Master is at all interested in that, we will let it go at that.

(Question read, as follows: "Was your comparison based on the information which was supplied in this exhibit, which has been offered as B-3?")

A. It was.

BY MR. EVANS:

Q. Do you find any direct comparison between any of the vessels which were built by Bethlehem and any vessels of similar design and of approximately the same tonnage, built by other yards?

A. Yes, sir.

Q. Give us the first direct comparison which you have.

A. There were tankers at the Baltimore Drydock Company of approximately the same size that were built at the Sparrows Point Company. These Yards are both located within eight miles of each other.

Q. What size boats were they?

A. They were approximately 10,100-ton tankers.

Q. Were the specifications the same?

A. No, sir, the Baltimore Drydock Company boats, as I recall it, were fitted with turbine machinery and the Sparrows Point with reciprocating machinery.

Q. What difference does that make in cost? I mean which is the higher?

A. The reciprocating machinery cost will be higher. It will likewise have an effect upon the dead weight of the vessel when it comes to the final comparison.

Q. Was that the only substantial difference?

A. I do not recall about the boilers, whether they both were Scotch boilers or not. I would have to look that up.

Q. Does your exhibit that is here that you made up tell you?

A. Yes, I can tell you exactly what it is.

Q. All right, look at it.

A. That was about the only substantial difference.

Q. And the effect of that, as I understand it, was the Bethlehem boats were of a type more expensive to build than the Baltimore Dry Dock?

A. Yes, sir.

Q. In making your comparison, did you make any allowance for that difference, or did you make a comparison on the actual cost of construction?

A. On the actual cost of construction.

Q. Now what was the comparison in cost. I mean, cost to the Fleet Corporation?

A. Total dead weight?

Q. Any way you want to give it. Total dead weight, I think, would be the most accurate.

A. The Baltimore Dry Dock Company tankers cost per ton dead weight $264.52 a ton.

Q. Now when you say that is what it cost, you mean that is what the Fleet Corporation has reported to Bethlehem that it paid to the Baltimore Dry Dock Company for those boats?

A. On all of these costs it is the cost to the Fleet Corporation.

Q. Now what is the price that Bethlehem is asking for its 10,100 ton tankers at Sparrow's Point under the terms of the contract?

A. Well, the Baltimore Dry Dock Company tankers were the contracts dated 2-28-18.

Q. Well, you have given us the price on the Baltimore Dry Dock?

A. I know, but we have three contracts with the Bethlehem, but if you want it on the total average, then—

MR. BROWN: Mr. Master, may I have an objection and exception to all the testimony relating to this Exhibit?

THE MASTER: Yes.

THE WITNESS: The Bethlehem price on tankers completed around about the same period for the Shipping Board was $222.17.

BY MR. EVANS:

Q. Now the comparison there is between vessels of substantially the same type with the exceptions that you have given us?

A. Yes, sir.

Q. Substantially the same size and construction, over substantially the same period of time, is that correct?

A. That would be substantially so.

THE MASTER: The Sparrow's Point plant, by Bethlehem?

BY MR. EVANS:

Q. At the Sparrow's Point plant by Bethlehem, and at the Baltimore Dry Dock plant, which is in the same district?

A. Yes, sir.

Q. Now what tankers are they? What are the Sparrow's Point Tankers that you have given us the cost on? What contract? Can you give it to us by contract number?

A. Yes, sir, that is what I am trying to give you.

Q. You have given us a figure of $222.17 per ton; what contract is that?

A. That is contract 179.

Q. That is your first contract?

A. Yes, sir.

Q. Now when you say the cost is $222.17, are you including in that the fixed fee and one-half of the savings which Bethlehem is claiming?

A. Yes, sir.

Q. In other words, that $222.17 is the amount which Bethlehem is here asking to be paid?

A. Yes, sir.

Q. Under the contracts?

A. Yes, sir.

Q. Now have you any other comparison?

A. Yes, sir.

Q. Of boats of the same type and size?

A. We have it on the West Coast.

Q. Well, have you any other comparison with the Baltimore Dry Docks?

A. Not on contracts with the Baltimore Dry Docks that were made prior to the Armistice.

Q. Nothing that would afford you a fair comparison?

A. No, sir.

Q. Now have you any other comparisons with other yards which you think are fair comparison?

A. Well, we have on the West Coast a direct comparison between the Union plant and the Moore Shipbuilding Company.

Q. What was the Moore Shipbuilding Company? Did that have anything to do with the Moore yard—Bethlehem's Moore yard?

A. No, sir.

Q. Where was the Moore Shipbuilding Company—on San Francisco Bay?

A. On the San Francisco Bay.

Q. In the same district as your Union and Alameda are?

A. Yes.

Q. What is that comparison? Give us the size and type of boats and contract number and the cost?

A. On the contracts that were made prior to the Armistice—it is kind of faded here, the contract number. Is it necessary to have the contract number?

Q. Well, can you give us your own contract numbers?

A. This looks like 177 and 301.

BY THE MASTER:

Q. What is the page you are referring to, Mr. Brown, on Exhibit B-4?

A. Page 18.

BY MR. EVANS:

Q. Have you got 177 separately—contract 177 separately?

A. Yes, I have that separate, and I have the other, and I have the average.

Q. All right. Now what was contract 177? What did that cover?

A. That covered a 10,100 ton tanker.

Q. How many?

A. Twelve.

Q. Now what boats have you compared with those tankers? What boats that go to the Moore yard to compare with them?

A. Well, you will have to take an additional six at the Union to make it a fair comparison with the Moore against their nine.

Q. Well, you just tell us what you have down there?

A. All right. Well, at the Moore plant on contracts which were made prior to the Armistice there were tankers of 9,850 tons dead weight and a cost of $262.13.

The Bethlehem similar boats of 10,100 tons dead weight and the price per dead weight ton is $224.69, or 67 cents—that is kind of dim on this print here, but I think it would be a comparison if you take the dollars and leave the cents off.

Q. All right; that is close enough. Now is that comparison between vessels of substantially the same type, or are there any differences in cost of construction?

A. They are substantially the same type.

Q. And that shows Bethlehem's cost, or their asking price, substantially lower than was paid to Moore?

A. Yes, even allowing for the slight difference in the size of the boats, or total dead weight, the

smaller boat would cost a trifle more per ton dead weight than the larger boat.

THE MASTER: Mr. Evans, may I ask the Government's counsel whether there is any dispute as to the figures used here as a basis of comparison?

MR. BROWN: As to the Exhibit?

THE MASTER: Whether the testimony given here for the record properly shows the comparison, or whether the Government's position is simply the comparison is irrelevant to the issues in the case?

MR. BROWN: Yes, Mr. Master; we take the position primarily that the comparison is entirely irrelevant to the Government's position in this case, and with respect to your other question, I think we would take the position if it were relevant it is probably not based on the proper comparison, and I think that would be the subject for examination by us as to the propriety of this comparison that he is making.

THE MASTER: What I wanted to know, so that I can consider it from—not only while the testimony is being given, but as to whether or not other testimony should be given to meet it of any value, that is, whether there is a dispute that the figures given here are accurate and afford a proper and usable comparative basis. If you object to that, then that becomes a question of fact as to which it may be necessary to have other evidence than Mr. Brown's, but if you concede that the figures are correct and it is simply a question of the propriety of

using them on the issues of this case, it is a totally different proposition.

MR. BROWN: We concede no figures other than those contained in Exhibit B-3, and we don't intend at the present time to go into this phase of the case, with respect to each contract mentioned by Mr. Brown, as it would involve a mass of testimony and be merely diverting to the real issues involved in this case.

THE MASTER: Then for the purpose of the case, do I understand that you concede the figures used by Mr. Brown for the costs under the Bethlehem contracts are not going to be disputed?

MR. BROWN: As to figures appearing in Exhibit B-3.

THE MASTER: But the figures, Exhibit B-3, as I understand, are the figures you furnished of amounts paid by the Fleet Corporation to other builders than Bethlehem?

MR. BROWN: Correct.

THE MASTER: As I understand, Mr. Brown, he is using those figures which you concede as the amount you paid for dead weight tons for somewhat similar vessels, the figures that you paid Bethlehem under their contracts for their boats of an allegedly similar type. Now, then, do you dispute that the dead weight per ton figure used by Mr. Brown as the amount which represents the claim of Bethlehem is an incorrect figure?

MR. BROWN: I don't think so, if it is based on Exhibit B-3.

MR. EVANS: It is based on Exhibit A.

BY MR. EVANS:

Q. Mr. Brown, when you spoke about the cost of Bethlehem Ship, by which you say you mean the amount which they are asking under the contract, where did you get those figures? From the conceded costs under the stipulations which is offered here as Exhibit A? Do you understand my question? You say that the amount which Bethlehem is asking under those contracts amounts to so much per ton. Where did you get that figure?

A. I got those figures from Mr. Geiss.

Q. From Mr. Geiss?

A. Yes, sir.

Q. Now you don't know, then, where Mr. Geiss took those figures from, do you?

A. No.

Q. You don't know whether they are the figures which appear in the stipulation of fact?

A. That is right.

Q. The conceded figures?

A. Yes.

THE MASTER: Mr. Evans, I was just inquiring to see whether or not it was necessary to go into the facts from this witness through the means you are adopting now, or whether if in the Exhibits which are or will be in evidence the comparative figures appear, whether that couldn't be tabulated by somebody who is a mere tabulating machine and let us have the result of them for the record. If the question is simply one of relevancy and the testimony we are getting now is merely a matter of either mathematics or the reading from Exhibits which

are already in, we are wasting a lot of time. That is what I had in mind.

MR. EVANS: Well, that is true, but here is the proposition: what you are suggesting being done is being done here because in addition to these, what we call direct comparison, he has a very elaborate Exhibit here with a comparison of the entire ship program, by separating all vessels into separate classes, making proper allowances by reason of difference in size or type, and reducing them to a common standard and making a comparison according to those standards. Now that we offer for what it is worth.

THE MASTER: All right.

MR. EVANS: Now as to your question, if there is any question about it—it wasn't raised at the last trial—

THE MASTER: I was raising it myself.

MR. EVANS: If there is any question about that, when Mr. Brown speaks about Bethlehem's cost, he is speaking about the conceded amount which we are entitled to, if we are entitled to our contract price. Do I make that clear?

THE MASTER: That is what I understood. Well, if Mr. Brown is needed to develop certain comparatives from these Exhibits, go right ahead.

BY MR. EVANS:

Q. Now have you given as the only, what I may term true comparison, between vessels of substantially the same type and size?

A. Yes, sir.

Q. Now in addition to that, did you make a com-

parison of all of the boats which were built by Bethlehem with all of the boats which were built by yards other than Bethlehem?

A. Yes, sir.

Q. Now how did you make that comparison? First, how did you classify your boat?

THE MASTER: Now, Mr. Evans, may I ask for my own information, I don't know what is in this Exhibit, whether the comparison which is now to be made relates to any vessels built by Bethlehem other than those for which the claim is made here?

MR. EVANS: Will you answer that question Mr. Brown?

BY THE MASTER:

Q. Is your comparison which you are now proposing to give us based upon any vessels built by Bethlehem for the Fleet Corporation other than those that are covered by the contracts which are in dispute here?

A. They are not.

Q. So that what you are doing is making a comparison between the vessels that are built by Bethlehem for which the contract price is claimed in these cases that are now under litigation and the ships built by all other builders during substantially the same time who had contracts with the Fleet Corporation?

A. Yes, sir, that is right.

BY MR. BROWN:

Q. May I ask, does that include the stock ships also, your Bethlehem ships?

A. It only—it includes the ships that were constructed for.

Q. And that includes the stock ships?

A. Because the stock ships became contract ships.

BY THE MASTER:

Q. The answer is it does include the stock ships?

A. Yes, sir, that was my understanding.

Q. It includes all Bethlehem contracts which are a matter of consideration in this case?

A. Yes, sir.

MR. BROWN: Mr. Master, may I also ask if it is not a fact Mr. Brown's comparison is not based on any analysis of the wage rate indications with these ships built by other builders which are used for comparative purposes, or of material unit costs in construction of the ships.

BY MR. BROWN:

Q. You never went into any detail with such cost to determine the price prevailing in connection with the material and labor for such comparative ships?

A. I did not.

BY THE MASTER:

Q. You took the amounts paid, as I understand, by the Fleet Corporation to these other builders regardless of what went into those amounts? You did not analyze the figures representing these figures?

A. During the construction of this program, the prices paid by one builder were the same as prices paid by another builder.

Q. You are talking now of labor?

A. The same as to material.

BY MR. EVANS:

Q. Mr. Brown, the question is, did you take the cost of construction as the basis of your comparison, or did you take the price that was paid?

A. I took the prices that were paid by the other builders.

BY THE MASTER:

Q. To the other builders, you mean?

A. To the other builders, as comparison to the price Bethlehem was asking.

MR. BROWN: If this is an appropriate place, I think I have a right to examine him as to his basis.

BY MR. BROWN:

Q. And in this comparison, Mr. Brown, as I understand it, you have assumed that the price of material used in connection with your comparative ship would be the same unit price used in construction of the Bethlehem ship?

A. I did not interest myself in that phase of it at all.

Q. And you have therefore assumed, as I have suggested?

A. No, sir; I didn't assume anything. It isn't a question of cost.

THE MASTER: As I understand it, Mr. Brown, this is not an attempt to show the amount of the benefit to one or the other shipbuilders growing out of their cost. It is a demonstration of the amount that was paid to other builders for somewhat similar or identical ships by the Fleet Corporation during the same time they were paying to Bethlehem on contracts, or contracted to pay to Bethlehem the sum that is in dispute.

MR. BROWN: Correct.

THE MASTER: And take that comparison

without regard to the cost to other builders of material or anything.

MR. BROWN: That is correct.

BY MR. EVANS:

Q. Now in making this comparison of the entire program, how did you divide your—

MR. HALLETT: May I ask one question?

BY MR. HALLETT:

Q. You had no information as to what the Government paid the builder under the terms of the contract and whether or not those payments allowed anything for additional plant or anything of that sort, to the respective builder, did you?

A. No.

Q. And in your comparison of cost you did not treat any of the amount of money which had been advanced by the United States to Bethlehem for plant extensions as part of the cost of ships?

A. No such items that you are mentioning were included in the figures of the cost of ship which you gave as the price of the ship and the comparison here.

THE MASTER: Well, as I understand it, what Mr. Brown had to make the comparison were the figures given by the Fleet Corporation in Exhibit B-3.

MR. EVANS: Yes, exactly.

THE MASTER: And whatever they include is included, and whatever was excluded was excluded, and he is making a comparison simply and solely on the per ton basis as figured out from the figures given by the Fleet Corporation which are on this record now in Exhibit B-3.

MR. EVANS: Exactly.

THE MASTER: And the thing he is now going to do, having given his direct comparison in the two instances where he could find similar ships, he is now going to attempt to show, for what it is worth, a general comparison of the whole of the shipbuilding program in which Bethlehem participated in one certain group, and another builders participating in another group of ships and make as best he can certain differentials and try to arrive at the basis, whatever value it has. I doubt that it is going to be very helpful in reaching a correct comparison, but we will take it for what it is worth.

MR. EVANS: Exactly.

BY MR. EVANS:

Q. Now Mr. Brown, I really don't want to put answers in your mouth, but we really think I can save a little time. Now for the purpose of making this comparison, you first divided your ships into certain groups, did you not?

A. Yes, sir.

Q. You included only steel ships; you didn't include any wooden ship in this, did you?

A. No, this was only a steel ship program.

Q. You divided all those ships into groups?

A. Yes, sir.

Q. And then how did you reduce the vessels in any particular group to a common standard of value? What I mean, did you make approximate allowances for differences in type of construction?

A. Not on this comparison first, no.

Q. Well, did you ultimately?

A. Ultimately, yes.

Q. Then as I understand it, you first divided all

of the ships which you are going to compare into appropriate groups?

A. Yes.

Q. Now that doesn't mean that every vessel in any one group is identically the same with each other vessel in that group?

A. That is quite right.

Q. You group them according to certain characteristics and you get into one group a lot of vessels which are more or less alike, is that right?

A. More or less alike and within a reasonable range of size.

Q. Now then you still have some differences between different vessels which you put in the same group?

A. Yes, sir.

Q. Now in order to get a common basis of the value for purposes of comparison, how do you make proper allowance or adjustment to take care of this difference within the group?

A. You take the total prices on each contract within this group and the dead weight, recorded dead weight. Those are all summed and divided by the total dead weight, giving you an average dead weight. It also gives you an average price.

Q. Average price for vessels of that group?

A. Both as to the total price and price per ton dead weight.

Q. Adjusted to—

A. No adjustment.

Q. Now, how do you make your adjustment?

A. Well, after that whole business is divided and classified, then you make your adjustments by taking—

BY THE MASTER:

Q. Did you use the chart to make the adjustment, Mr. Brown?

A. No, sir; used the tabulation to make the adjustment, by taking under the various contracts, the number of the vessels of them particularly, the type of machinery and the number of vessels that have been fitted with turbines, number with reciprocating engine, number with boilers and so forth and got an average of that group. The same way through with all other groups, the same way with Bethlehem vessels. Then that gave you the physical characteristic.

Q. Of each group?

A. Of each group. Then I made an allowance in money, converting that into money, and brought that all up to a standard.

Q. On a per dead weight ton?

A. Some had to be reduced to dead weight ton, some were on the total dollars and so forth, but eventually they were all molded into one proposition. Then we took the different classes under the different groups and we got a sum total, divided by the number of ships to get the average per ship. Now, if Bethlehem had built some 7,500 ton ships and they were compared with a class of 7,500 ton ships of the other people, if Bethlehem's prices were higher, that would be added to the Bethlehem; if the other people were higher, that would be added to the other people, so that you brought them to a common specification. In other words, if one had reciprocating engine and the other had turbines in, you would bring the turbine cost up to the reciprocating cost, or vice versa. That was done throughout the whole group, and which is a comparison, so that finally you obtained a price adjustment which would indi-

cate which of the ships would cost the more money, whether Bethlehem or whether the other builders, or which ships were of the higher specification, in other words. Now the amounts that are indicated may not be absolutely accurate, but it shows the trend. Do you understand it?

Q. I understand what you have said. I am curious to see what your result is going to be.

BY MR. EVANS:

Q. Well, all right, if the Master understands what you said, that is the important thing. Now what was your result?

A. The result was that Bethlehem's program, on its total program as compared with the corresponding groups of the other builders—now you must understand Bethlehem built no 3,000 ton ship, so they are out of it, but they did build 7,400 ton ship, which are compared with 7,500-ton ship, and they would be reduced to the dead weight ton. Now that shows the Bethlehem ship would have on this basis of comparison, approximately $800,000 more than the other builder's ship.

BY THE MASTER:

Q. You mean as a sum total?

A. The sum total, which I say, is absolutely negligible.

Q. I don't know how valuable that result may be, but to get a further comparison, may I ask you this question, whether the $800,000 difference which you speak of is comparing Bethlehem with all of the other ships built by all of the other builders? You included all of the other builders in that total?

A. All of the other builders, ships of that type and with which the Bethlehem were conformable.

Q. And you excluded from the ship built by other

builders ships that were not conformable with the ships that Bethlehem was building?

A. Yes, sir.

Q. And did you attempt to break down your total figure for all of these builders by comparing the individual builders other than the two that you have heretofore given, or substantial identical ship with the ships that Bethlehem was building of the same type?

A. We took no one individual builder, but took them all.

Q. Did you make comparison of the total number of ships of the group type that Bethlehem was building with the total number of ships of the same group type that each one of the other builders were building?

A. Collectively.

Q. You simply collected them all?

A. Yes, sir.

Q. Made no individual comparison?

A. No, sir.

BY MR. EVANS:

Q. I don't know whether this is clear. You said something about the cost of the Bethlehem boats being $800,000 more?

A. I meant that there was $800,000 in favor of Bethlehem.

Q. You mean to say that the type of vessel which Bethlehem built was a more expensive type of vessel to construct than the vessels built by other yards which you used as a comparison, is that what you mean?

THE MASTER: That isn't what he said. The problem is a difficult one to make clear and you are talking in very general terms when you

are speaking of the advantages pro and con because of the differential that Mr. Brown has said he used, and one of the differentials is what the Fleet Corporation got for its money, whether it got a higher type of vessel from Bethlehem or from the other builder.

MR. EVANS: That is exactly it.

THE MASTER: That is what you are going to find a difficult factor to get in this result, I believe.

BY MR. EVANS:

Q. I want to find out which way that factor was?

A. Why, the net increase of other builders over Bethlehem's price will be $885,000.

Q. Now that doesn't mean anything to us at all, Mr. Brown. What do you mean by net increase of Bethlehem over other builders?

THE MASTER: No, he didn't say that. He said net increase of the other builders over Bethlehem.

BY MR. EVANS:

Q. Well, that still doesn't mean anything?

A. I mean to say the other builders would have to expend $885,000 to bring their ships up to Bethlehem's specifications.

BY MR. HALLETT:

Q. Was that on the total program, or on one ship?

A. No, that is compared with the total program as built by Bethlehem and the equalizing amount paid by the other people.

Q. In the same group?

A. Taking the groups collectively.

Q. Do you only refer to the 7500 ton group or all of the group?

A. All of the group.

BY MR. EVANS:

Q. To make one more stab at it to get it clear in my mind, you mean by that, in point of value the ships built by other yards which you used for the purpose of comparison were worth less—I don't mean worth less, but worth less than the corresponding ships of the Bethlehem, with which you compared, is that what you mean?

A. I mean Bethlehem's ships are worth $885,000 more than the other ships.

Q. Because they are more expensively constructed?

A. Yes.

Q. Than the vessel with which you made your comparison?

A. That is what I am trying to say.

THE MASTER: Now there is another factor, Mr. Evans, that must be taken into consideration, and that is, as I understand it, the item which goes to make up all the items which go to make up that $885,000 difference for the cost to Bethlehem of the things that went into the Bethlehem ship. Now whether or not the other builders could have gotten them at a greater or less price is a matter that is left up in the air. So that it will be clear, as I understand it from this witness, the greater value which he attributes to the Bethlehem ship over and above the total of the other ships built by other builders is based upon the fact that it cost Bethlehem to put those additional or bet-

ter things into it, because that is the impression I have gotten from it.

THE WITNESS: No, that isn't right.

BY THE MASTER:

Q. Well, then, what is right? Tell in your own way, Mr. Brown, what you mean by the $885,000 difference. Then counsel can examine you both ways and maybe get something out of it.

A. I will see if I can.

THE MASTER: Is this new testimony?

MR. EVANS: No, it was all covered before.

THE MASTER: How was it stated before?

MR. EVANS: I think it was perfectly clear before.

THE MASTER: Mr. Brown approached it somewhat differently before. If you can help, bring him back to his previous testimony.

MR. EVANS: Well, let's see. I don't think it is very important anyhow.

BY MR. EVANS:

Q. Mr. Brown, whatever the difference was, whether it was $800,000 or more or less or whatever the difference was, your conclusion was that the vessels which Bethlehem built were of a more expensive type to construct than the comparative vessels furnished by other yards?

A. Yes, sir.

Q. Now whether that is $800,000 or a million or $500,000, whatever it is, that is a fact?

A. That is a fact.

Q. Now when you came to make your actual comparison of cost, as I recall it, you ignored that altogether?

A. Absolutely.

Q. And you only told us the $800,000., which you said in a program of this size was negligible, to illustrate that in making that comparison you weren't comparing a cheaper article which Bethlehem built with a more expensive article which somebody else built?

A. No, sir.

Q. But if anything, it was the opposite, is that it?

A. Yes, sir. Maybe I can make it clear here. If the group had turbine machinery in it, built by other builders, there was an allowance made to change that to reciprocating-machinery, to make both classes conformable. If on Bethlehem's part they had turbine machinery and the other company had reciprocating machinery, the Bethlehem was increased to comply with the other builder.

Q. But that was simply for the purpose of determining whether your comparison was a fair one both for Bethlehem and the Fleet Corporation or to see whether you were comparing things of a similar or approximately of a similar value, wasn't it?

A. Yes.

Q. And you found as a result of that calculation, and that was the only importance of that calculation, that what you were comparing was an article or group of articles which Bethlehem had furnished which by and large were more valuable articles than the articles furnished by other yards which you used as a basis of comparison?

A. That is right.

Q. Now then when you came to your actual comparison of cost, I understand you made no allowance whatever for those differences?

A. That is right.

Q. You compare them vessel by vessel?

A. That is right.

Q. Now then you tell us what the comparative cost was on the program as a whole, that is, the entire contract ship program of Bethlehem, with the entire ship program of the Fleet Corporation had with the yards other than Bethlehem on the basis of cost per dead weight ton.

THE MASTER: Of the same class Bethlehem was building?

MR. EVANS: No, I wanted first as a whole and then I am going to group later.

THE MASTER: Well, he hasn't gotten that.

BY MR. EVANS:

Q. Well, what comparisons did you make?

A. We drew all the facts together and put them in classes and the only comparison you can make at all is by means of a chart.

THE MASTER: That is why I asked my question first. I knew he would get back to the chart.

BY MR. EVANS:

Q. Now tell us what the result of that comparison was?

A. The result of this comparison was that in all cases with the exception of, I think it is at Harlan, the Bethlehem's prices are very much lower than those of the other builders when reduced to a comparative dead weight basis.

Q. In all cases?

A. Yes, sir.

Q. Now what is the one exception?

A. There is a 5,100 ton vessel.

Q. 5,100 ton cargo boat?

A. Cargo boat.

Q. Under what contract?

A. Well, if that is necessary, I will have to go back in here (indicating). There were five of them built at Harlan and two of them built at Moore, but they are under contract 314.

Q. And as to those boats, you found that the Bethlehem prices—by which you only mean the price Bethlehem is asking under those contracts?

A. Yes, sir.

Q. Was higher than the average price which the Fleet Corporation paid for similar vessels to other yards?

A. Yes, sir.

Q. Now did you make a comparison, contract by contract, I mean for each Bethlehem contract, or did you make it for each type of Bethlehem boat? I mean did you make it on the 9100 ton type?

A. Made it on the 9,100 ton type, 10,100 ton type, and so forth on each size of vessel.

Q. On each size and each type?

A. And each type.

Q. You did not compare tankers with cargoes?

A. No, they are separate sheets.

Q. Now then do I understand you to say with the exception of 5,100 ton cargo, on contract 314, in the case of each one type and size of boat which Bethlehem built, the price which Bethlehem is asking for dead weight ton is less than the average price which the Fleet Corporation has paid for similar vessels built by other yards?

A. As compared with contracts made in 1917 and 1918; not those made in 1919 and 1920.

Q. No, I meant built under contract, and made at approximately the same time Bethlehem was building?

A. Yes.

Q. Now didn't you also make comparison of the cost per ton of the entire program?

A. Including all of the ships?

Q. No, you have given us comparisons vessel by vessel or group by group, we will say, and you have shown that in each case with the exception of one, Bethlehem's price is lower. Now did not you take an average cost on all Bethlehem's tonnage built under these contracts with the Fleet Corporation, of course, I mean, and the average cost per ton of all similar vessels built by other yards under contract made at the same time?

A. You mean including 9,100 tons and 10,100 tons?

Q. Yes.

A. No, I don't see what you can get out of it.

Q. Well, if you didn't, all right, but I was under the impression that you did, Mr. Brown; that is all, you say you did not?

A. I don't recall any such.

Q. Well, I am just mistaken about it; I thought you did?

A. Yes.

Q. Now the result of your calculation, together with the papers showing how your conclusions were arrived at, are contained in this Exhibit which was offered in evidence at the last hearing, marked B-4, is that correct?

A. Yes, sir.

Q. And is the information upon which your conclusions are based set forth in that Exhibit in suffic-

ient detail so that anyone familiar with the building costs could take that Exhibit and check it and verify the accuracy of your calculations?

A. Yes, sir.

Q. And the propriety of your calculations?

A. Yes, sir.

MR. EVANS: Now if there is no objection, I will offer that in evidence at this time. It is a little irregular, I admit.

THE MASTER: There is no objection, I understand, to its being offered at this time. The objection is made to its relevancy, and it is admitted subject to exception granted to counsel for the Government.

BY THE MASTER:

Q. Mr. Brown, for my information, do I understand that you had here a chart showing the comparative per dead weight ton price between Bethlehem and the other builders on this class of boats that you have described, a separate chart for each one?

A. May I just show you what was done?

Q. Yes.

A. Now you have them taken in a group of vessels that average 3,950 tons at a cost of $785,000. This consists of 330 ships. They are one deck, 3-island type. There is another group called group B, consisting of 126 ships of an average dead weight of 5,250 tons, and the average cost of $1,015,000., which are likewise one deck, 3-island type. Then in order to produce the cost per dead weight ton it is merely the total cost divided by the dead weight, which results in a line marked price per ton dead

weight, 1-deck, 3-island type. This same process carried throughout on other types of ships covering 2-deck, 3-island type, under lump sum basis and as built by agency yard; also vessels of the shelter deck type. Each group gives the number of ships and from the chart can be taken off the total price and the dead weight. There is also plotted on the chart the ships that have been constructed by Bethlehem which have been enclosed by means of a double circle, which gives a direct comparison of the average cost of Bethlehem's ship in its group as compared with the average cost of vessels in similar group and similar type of vessel built by others.

BY THE MASTER:

Q. What is on the chart to indicate the ones of other builders—a single circle?

A. A single circle.

BY MR. HALLETT:

Q. When you say 2-deck, 3-island lump sum, do you mean that you confined yourself to lump-sum and did not include any of the cost plus contract?

A. I included all of the contracts given by you to me in that Exhibit.

Q. You have another line here which you call agency yard, so that you made a distinction between agency and lump-sum, and I am trying to find out where the cost plus contract, whether they are considered by you as agency yards or whether they are considered as lump-sum yards?

A. Well, the agency yards were your Hog Island Yard and the yard at Bristol, the Merchant Shipbuilding.

Q. I know which ones they are, but—

A. Now if you had cost plus contract at other yards, they were included in the lump sum basis.

(The description just given is the description of the chart that appears first in Exhibit B-4 called Shipping Board calculation, contract on East Coast and lake district.)

BY THE MASTER:

Q. Now is your testimony on the other chart substantially the same?

A. It would be exactly the same.

Q. Except as the basis for it makes the difference appear on the chart, but the method adopted is reflected in these other charts similar to the chart you just described?

A. Exactly the same.

Q. You have another chart, however, for the comparative prices based on the class of vessels alone, have you? That is to say, you have another single chart which shows the comparative price per dead weight ton, for, we will say, 9,100 ton tankers?

A. This is the 9,100 tanker.

Q. Where is it?

A. Right here. That is just what I have got. I got everything here, your 9,100 tons. Now you will get your price per dead weight ton there.

Q. And that all appears on the one chart?

A. On each chart. Now this is the tank shipped on the West Coast (indicating). These are the tanks shipped on the East Coast (indicating). These are the cargo shipped on the West Coast (indicating), and these are the cargo shipped on the East Coast (indicating).

Q. So that the charts are inclusive of all—each chart is inclusive of the various size of ships that you have testified to here, and the variation in the

chart is the location of the yard where the ship was built, the district?

A. The district in which the ship was built.

Q. And the character of the size as to what it is.

BY MR. EVANS:

Q. Let me ask you, each particular size of ship is represented by a spot on your chart, isn't it?

A. Each particular group that was taken to produce the curves is plotted on the chart.

Q. So you have a spot for 9,100 ton tankers, have you?

A. Yes, as built by Bethlehem, simply read over 9,100 ton, that is the mark, Bethlehem's curve.

Q. Then you have a spot and that represents the asking price of Bethlehem's 9,100 ton tankers, and every other type of boat that Bethlehem built?

A. Yes.

BY MR. WOOD:

Q. And the corresponding chart shows the relation between that particular size and the cost of a group of ships on which you have arrived at the cost of a boat of that size built by other builders, is that right?

A. Yes.

Q. In other words, it is a comparison of the cost of the Bethlehem ships grouped according to size and class with the cost of similar sizes and classes of ships, is that right?

A. Yes.

MR. EVANS: Now I suggest that those two Exhibits, B-3 and B-4, be treated as physical Exhibits, and not to be incorporated with the record.

THE MASTER: It is understood with the consent of counsel, Exhibit B-3 and Exhibit B-4

will be treated as physical Exhibits and will not be copied into the record.

BY THE MASTER;

Q. There are just two or three questions I would like to clear up for my own information. Take your chart, Exhibit 34½, Mr. Brown, and tell me how, with the chart alone, you could get these factors that entered into the making up of the lines of the chart? Could you do it without having working papers?

A: No, sir.

Q. Therefore, these charts, this one and the one you referred to yesterday, and whatever others you may have made, are of value for comparative purposes only so long as your working papers are available to explain what entered into the making up of the lines on them, are they not, or insofar as your memory lasts to give the details that you used, isn't that so? Can you, for instance, take from the chart alone a figure to use as an estimate today without knowing what were the elements of cost of material and wages and other things of that kind?

A. No, you cannot.

Q. You cannot?

A. No, sir.

Q. During 1917 and 1918, about how long did you keep your working papers for these different charts?

A. That is very difficult to say.

Q. The changes were very rapid at that time in both the cost of material and cost of labor, were they not?

A. Well, in 1917, 1918, if it would happen there was changes in the cost of material—of course, there was changes in the cost of labor, but under these contracts, you had a labor protection from the Government, so that your change in labor as far as the

charts were concerned would be of some importance, but as a basis solely as you continue to contract on that basis of such and such a date. If that would change, then your chart would be all off.

Q. Now this chart carries a date November, 1917. Did you at the time of making up that chart have a detail in working paper form?

A. Oh yes. It was necessary to get it up.

Q. You had that?

A. Yes.

Q. How long did you keep your working papers?

A. That is difficult to say.

Q. Well, approximately, according to the best recollection when did you destroy them?

A. I haven't the remotest recollection of the papers. After they have been prepared and used, just the same as a lot of others, when you prepare a chart on a certain basis, the others become practically of no value.

Q. Well, they were necessary for a certain period of time, so long as you proposed to use the chart, weren't they?

A. Well, after the chart had been prepared and those conditions remained unchanged.

Q. I know, but you couldn't tell after you prepared the chart when there would be a change in the units from which you made your lines, could you?

A. No, if there had been a radical change, then you would have had to prepare new stuff.

Q. Exactly; so that in anticipation as a possible radical change, the course of wisdom, in times like those, like any other time, is to keep the working papers with the chart, isn't that so?

A. Depending on how much detail you go into. If you just make it as close as you could possibly

think, and where a large percentage was estimate, based upon judgment, if you are preparing a chart under the normal conditions, you go into a great deal of details and no doubt could keep that and that would become part of the file, but if you are going into a situation such as existed in 1917, where there was a big turmoil and not a great deal of time to do things, and where you might say there was a considerable fluctuation, now then you have given your certain factors which could be determined, or as being substantially fixed. Now then, you could make only an approximation. Now after having made that approximation, if those conditions hold, the fact you have just made up some general figures and arrived at a result, those papers that you had then are of no practical value as I see it, because if your situation changes in three months so that you got an entirely different situation, you have to make a further revision of the thing, then you have got to start afresh.

Q. Well, to the extent you had working papers, as I understand, you have no very definite recollection as to how long you kept them?

A. That is right.

Q. You had them, however, until after the meeting of January 3, 1918, in Washington?

A. Oh, I should say yes.

Q. The contract with the Government provided for a division 50-50, of a savings over and above the contract price?

A. Yes, sir.

Q. The contract also provided for adding to the contract price a differential in the wage scale, or if there was a decrease in wages, there was a deduction in the contract price, was that it?

A. The estimated wages were taken, which were decreased or increased and affected your basic cost.

Q. Now where was there a record made with reference to these contracts as to the estimated cost of labor, do you know?

MR. EVANS: That is all covered in the stipulation.

MR. BROWN: Oh no, absolutely not; let us have that question.

MR. EVANS: I am all wrong.

BY THE MASTER:

Q. The question that I was asking, Mr. Brown, relates to the item of wages. Now as I understand, the contract, the item of wages was to be up or down?

A. Yes, sir.

Q. And that was direct labor only?

A. Yes, sir.

Q. And do you have a single item of direct labor in the figures that you used for your working sheet in making up this chart 34½?

A. Yes, sir; not dividedly.

Q. And you used, as I understand it, for this particular chart, the direct labor payments that were made at the Fore River plant on the vessels that you used as the basis of figures, is that correct?

A. The plant direct labor cost, yes.

Q. And that figure, did you keep that figure for any length of time, on your direct plant labor cost?

A. I suppose that was kept with the estimate papers just as long.

BY MR. EVANS: You are asking about the actual direct labor cost. It is not only preserved, but it is furnished in the Exhibit G-6.

THE MASTER: What I was trying to get at was the direct labor cost that entered into the figures which he used in making up this chart, whether that was preserved also.

MR. EVANS: Well, I would like to help you—

MR. BROWN: Well, let the witness help him.

THE WITNESS: What I understand, Mr. Master, you want to know if I used the direct labor price during the construction period, did I use the direct labor cost existing in the yard as of January 3rd on which these contracts are based?

BY THE MASTER: That was what my question was.

A. That is what you want to get at?

Q. Yes.

A. I gave testimony here that we had been ordered in October to put in a change of wages to the wages that were being paid by the Navy Yard in the district where the ship was located. They were put in effect, but not in whole. The wages as of January 3rd, or of the period which I prepared this chart, had to be a more or less of a guess, based upon how the Navy Yard wages would affect the wages of the plant. Now we have got it so far as you could by departmental cost increases, but that wasn't complete, and you knew it was going to be more, so you had to assume an amount which naturally at that time you did assume some round figures.

Q. So that that factor in the chart was a figure

based upon the best information that you could get, but included an arbitrary adjustment that you made as a result of your anticipation of the cost?

A. Yes, sir.

Q. I wanted to ask just this one question, and that is, whether at the time that you and Mr. Powell were discussing the detail that was the basis for the figures given in your letter of December 19, 1917, he had the benefit of your working figures, either from the papers themselves or from re-construction sheets that you yourself gave him?

A. Yes, sir. Well, I understand the Master to ask me if Mr. Powell had the benefit at that meeting.

BY MR. EVANS:

Q. Now what meeting are you talking about?

A. Isn't he talking about the meeting of December 18th?

THE MASTER: Yes, the meeting of December 18th.

THE WITNESS: That he had the benefit of the information in some form that I developed.

THE MASTER: Whether Mr. Powell had the benefit of the same details that Mr. Brown had used in making up his chart, that is what I asked.

MR. BROWN: Now what is the answer to that question?

THE WITNESS: Well, no.

BY THE MASTER:

Q. Then you don't understand me, Mr. Brown?

A. Well, you are asking me if I had or if he had

all of this stuff that I had there. As I understand it, did I have it in whole or in part, or had I reconstructed a chart in effect which he got the benefit of what I had done, is that what the question is?

Q. Well, I am not concerned so much about the reconstructed chart as I am about the fact situation. You had certain figures you used in making up the chart which we called Exhibit G-34½?

A. Yes, sir.

Q. Some of them were actual figures given to you by the department, and some of them were your own arbitrary figures which you used, based on your own best judgment?

A. Yes, sir.

Q. Some of them were in working sheets, and some of them were in your head, you hadn't put them down on paper, as I understand your testimony. Now what I want to know is whether in working out the figures you did in your proposal of November 19, 1917, in the course of your discussion with Mr. Powell, where, as I understand it, you and he discussed the basis of the proposal that he was to make, Mr. Powell had the benefit from you of the details that entered into your making up of the lines of the chart that has been used here?

A. He had the benefit of the knowledge that I had acquired.

Q. And in what form did he get it?

A. He got it in the form of a re-constructed chart and an explanation.

Q. And explanation?

A. Yes, sir.

Q. And the explanation went into detail?

A. More or less, I should think.

MR. BROWN: Mr. Master, before adjournment, I would like to press this, if you don't mind, and to ask Mr. Brown in the details in respect to the facts and figures he submitted Mr. Powell at that conference. I would like to see what his recollection is.

THE MASTER: I understood he already testified he did not give him details except in the January discussion.

MR. BROWN: If you think it is clear he gave him nothing but an Exhibit which he remembered.

THE MASTER: No, he set forth the details.

BY THE MASTER:

Q. Mr. Brown, as I understand it, you not only reconstructed a chart similar to the one you reconstructed here for me, which is in the record of this case as Exhibit G-204, but you gave Mr. Powell an explanation of how you arrived at what the chart represented; is that correct?

A. Either at that time, or he understood it before that time.

Q. Either at that time or at a previous time when you had explained the basis for making up the chart which is G-34½, is that correct?

A. That is what I would recall.

Q. Well, do you recall whether at the time you explained this so-called reconstructed chart you went into the exact details of the various elements that entered into it?

A. No, I don't.

BY MR. EVANS:

Q. You mean you don't recall, or you don't know?

A. I don't recall.

BY MR. BROWN:

Q. Mr. Brown, do you remember that you explained the basis of this chart to Mr. Powell in general in the meeting of December 18th?

THE MASTER: Which chart are you talking about now?

BY MR. BROWN:

Q. The first chart, Exhibit G-34½?

A. Why, I don't think there is any question but what I explained to Mr. Powell the method or process of working this up.

Q. Prior to the December 18th conference?

A. Yes, I should think that would be previous.

Q. And what would be the date of such an explanation made to him?

A. That I couldn't tell you.

Q. Well, do you remember testifying under examination by the Government that to the best of your recollection you did not discuss this chart with Mr. Powell from the time he first asked you to prepare it until you finally conferred with him on the subject of the chart in December?

A. Well, I may have so testified, but if I did, you will have to take it for what it is worth. It has been so long ago.

Q. Well, what is your recollection now?

A. It certainly seems to me I would not prepare this thing for Mr. Powell unless I had discussed with him what was being done.

Q. Mr. Brown, don't you know you went into

considerable detail to explain why it would not have been practicable for you to go into conference with Mr. Powell from the time you first prepared it until you met him in Washington? Don't you remember so testifying?

A. Not from the time I first started.

Q. You don't remember so testifying?

A. I will have to answer no.

Q. Well, when you met Mr. Powell at the conference on December 18th, as I understand it, you did not explain to him at that time in detail the figures and the factors which you used in connection with the chart?

THE MASTER: Well, I don't think that is quite fair.

MR. BROWN: It isn't meant to be unfair.

THE MASTER: I know, but his answer to that is he did explain to Mr. Powell, either then or previously, all of the detail which entered into the making of the chart and that this was a reconstruction of the original chart.

BY MR. BROWN:

Q. Well, Mr. Brown, so that we may have the matter clear, did you explain to Mr. Powell, either at the December 18th conference or prior thereto, in detail the figures and factors used by you in preparing this chart?

A. I daresay I did at some time.

Q. You don't have any recollection of ever having done so, is that correct?

A. Well, it would be a perfectly natural thing to do.

Q. And you think it was probably prior to the December 18th conference?

A. That I can't say; either that or prior to it.

Q. But you have explained to him either at the December 18th conference or prior to that time, the basis of your preparation of this first chart?

A. I should say probably so.

Q. And that it had related to—that the basis of the chart had been Hulls 253, 254, 158 and 159, and that you likewise explained to him the particular factors and figures used by you in determining your estimation for the cost of similar ships?

A. I think that would be right, that I did explain that to him.

Q. Either at the conference of December 18th or prior to that time?

A. Yes.

(Recess until 2 o'clock P. M.)

HARRY BROWN, resumed:

BY MR. EVANS:

Q. I want, if I can, to clear up some confusion which appeared in your testimony relative to the comparison which you made of the cost to the Fleet Corporation of two ships built by Bethlehem and the cost to the Fleet Corporation of similar ships built by yards other than Bethlehem under contracts made approximately at the same time. Now, do I understand you to say that comparing, we will say, the tankers built by Bethlehem on the East Coast with tankers built for the Fleet Corporation on the East Coast by yards other than Bethlehem, you found that the price which is being asked by Bethlehem was lower than the price which has been paid

by the Fleet Corporation to other yards for similar vessels for the equivalent tonnage?

A. I said it would be less.

Q. And does that apply to every size and type of vessel which Bethlehem built with the exception of the 5100 ton cargo boats built by Harlan & Moore under contract 314?

A. Yes, sir.

Q. In the case of those boats I understand that the reverse is true, that the asking price of Bethlehem was higher than the comparative price which the Fleet Corporation has paid to other yards for similar ships?

A. Yes, sir.

Q. Taking the entire tonnage built by Bethlehem under these contracts in suit, and comparing the price which Bethlehem is asking under these contracts with the price which the Fleet Corporation has paid to other yards for the equivalent tonnage of the same type of ships, is the total asking price of Bethlehem more or less than the total price which has been paid to other yards?

A. Less.

Q. By how much?

A. Approximately $8,000,000.

Q. Now in making that comparison have you made any allowance in dollars for the fact that while the vessels are of the same type, or substantially the same type, there may be differences in specifications, as, for instance, that one special might have turbines and the other reciprocal engines, and details of that sort, which would either increase or decrease the cost of construction of that vessel? Have you taken that fact into consideration in making your

comparison as to the relative cost to the Fleet Corporation?

A. No.

Q. So that the figure you give at $8,000,000, in round figures is based on the assumption that the vessels were of substantially the same specifications?

A. Yes, sir.

Q. Now, in point of fact they were not of the same specifications, in every case, were they?

A. They were not.

Q. In order to see whether in making the comparison on the basis which you did, that is ignoring those differences in specifications, in order to determine whether you were making a fair comparison, you went a step further, as I understand it, and you made an analysis of all these differences in specifications between boats built by Bethlehem and boats built in yards other than Bethlehem. Am I right?

A. Yes.

Q. And that was for the purpose of determining which vessels were the most expensive types to build, those built by Bethlehem, or those built by other yards with which you compared Bethlehem ships?

A. Yes, sir.

Q. And also for the purpose of determining vessel by vessel or group by group which was more expensive in your opinion?

A. Yes, in my opinion.

Q. Now taking it as a whole did you find that the type of vessels which Bethlehem built was more or less expensive type to construct than the type of

vessels which the other yards built and which you had used for the purposes of your comparisons?

A. They would be more expensive.

Q. Bethlehem's would have been more expensive?

A. Yes.

Q. And in your opinion about how much more?

A. About $880,000.

Q. And that is the $800,000. figure or the $880,000. that you previously referred to in your testimony?

A. Yes, sir.

Q. Putting it in another way, is this a correct statement; that in making the comparison you have compared a more expensive type of vessel built by Bethlehem with a less expensive type built by other yards?

A. Yes, sir.

Q. And making no allowance for that difference in value but treating them as though they were of equal value you found that the total cost or asking price of Bethlehem is $8,000,000. less than the price paid to other yards for a corresponding amount in tonnage?

A. Approximately so.

Q. Now, if you adjusted that figure so as to reflect the differences in specifications, as I understand it, if you were attempting to compare two things of the same value, the difference, instead of being $8,000,000., would be $8,800,000.00; is that right?

A. Yes, sir.

Q. That is to say, if the other yards, instead of building vessels of the specifications which they did build, had built vessels to the specifications to which Bethlehem built them, then, in your opinion, the

cost to the Fleet Corporation of those vessels would have been increased by another $800,000.?

A. Yes, sir.

Q. And added to your $8,000,000. which is the difference between the price to date, which they actually paid, and what Bethlehem is asking; is that a correct statement?

A. Yes, sir.

MR. EVANS: Is it clear?

THE MASTER: That clears up to the mind of the Master at least the differences that existed in the testimony heretofore. We understand that this is all subject to Mr. Brown's objection as to its relevancy.

BY MR. EVANS:

Q. Did you say Mr. Brown, that you got your figures as to Bethlehem's asking price from Mr. Geiss?

A. Yes, sir.

Q. For the purpose of making up that Exhibit B-4?

A. Yes, sir.

Q. I am not sure that it is quite clear what the fifty cents was that you used as the current earning rate of direct labor in making your estimates of cost based on 253 and 254. Will you tell us again, at the risk of repetition, what that is?

A. That is the amount of money that is paid to labor in the yard divided by the number of hours that they worked and includes piece work, premium work and contract work.

Q. As I understand you to have said before that was not an exact calculation?

A. Right.

Q. Why wasn't it an exact calculation? That is what I want to know?

A. As I said before, the rates had not all been put in.

Q. You mean the Navy Yard rates?

A. The Navy Yard rates had not all been put into effect.

Q. But you had been ordered to put them in, hadn't you?

A. We had been ordered.

Q. Were there some delays in getting them into effect after you were ordered to do so?

A. Well it takes time to get them into the various departments, if you have several thousand men working you don't just put them in over night and make your adjustments and the probability is you might delay putting them in as much as you can, especially when you got fixed contracts. Now your earning rate—

Q. I will come to that later but I first want to get clear just what it was intended to represent. Was it intended to represent the current earning rate in your plant, assuming that you had put into effect in all of your departments the current Navy Yard rates as you had been either instructed or authorized to do previously; is that what it means?

A. Yes, sir.

Q. It did not then include any anticipated increase in wage rates over the expected period of the construction of the vessels?

A. It did not.

Q. It was your attempt or the Accounting Department's attempt to figure what the earning rate would be on the current wage scales in effect at the Boston Navy Yard when that wage scale had been

fully put into effect at Fore River?

A. Yes.

Q. And the only reason that it was a matter of judgment or estimation was because you had not put that new rate into effect in all of your departments?

A. Yes, sir.

Q. Will you tell us what is the difference between a wage rate and an earning rate, if there is a difference?

A. Well the wage rate is a rate set per hour for each man working in the plant. The earning rate is the amount of money actually paid to the man divided by the number of hours he works.

Q. What is the difference?

A. The difference is this; take a riveter, his day rate may be 60 cents an hour and there is a certain number of rivets allowed for a day's work. He might readily drive twice that amount of rivets in a given number of hours.

Q. And suppose he does?

A. He doubles his wage.

Q. So that in that case, assuming that your wage rate was, we will say, 50 cents an hour, your earning rate would be $1.00 an hour, using the case which you stated, which may be an extreme case?

A. Yes.

Q. And is that true of direct labor other than riveters?

A. Yes, it is where ever piece-work or premium work or contract work applies.

Q. So your hourly wage rate does not give you your earning rate?

A. No, sir.

Q. Your figure of 50 cents, which you used, was

intended to represent the average hourly earning rate at the plant?

A. Yes, sir.

Q. Not the average labor rate, is that right?

A. Correct.

Q. The two things being different, for the reasons that you have just explained?

A. That is correct.

Q. And when you made your comparison with 253 and 254, you there again took the average hourly earning rate, did you?

A. Yes, sir.

Q. And not the average labor rate in effect during the period of construction of these ships—I mean you compared the same things?

A. On the same basis, yes, sir.

MR. BROWN: Mr. Master, I think it would clarify matters if it would be agreed by counsel that all Mr. Brown's testimony which has been or which will be quoted from pages of the testimony taken in the previous proceeding before Judge Roberts, prior to page 441 of such testimony, was testimony which was given at the hearings before Judge Roberts that took place on May 20 and May 22, 1929, and that the first reference to the second chart, alleged to have been constructed at Washington, appears at page 442 of Mr. Brown's testimony given at the hearing before Judge Roberts on June 10, 1929.

MR. WOOD: I think that is agreeable if it is also stipulated that at no time, either during his direct, cross, or re-direct examination, when he was called as a witness by the Government, was any reference made in the direct examina-

tion to anything that he did in Washington, but that that examination on which he was questioned in chief by the Government, it was confined to an explanation of his chart, of his original chart.

MR. BROWN: Well, of course, we cannot agree to that.

MR. WOOD: Well, that is a fact, so then let us put it all in.

MR. BROWN: Well, it is not the fact, as I understand it, Mr. Wood.

MR. WOOD: Then you have not read the testimony and I read it all over yesterday.

MR. BROWN: Well, Mr. Wood, possibly you have more time to read the testimony than I have, but I will admit there was no reference to the second chart prior to page 441 of the testimony which was taken before Judge Roberts.

MR. WOOD: He was not inquired of as to what he did in Washington.

MR. BROWN: May I finish? That no inquiry was made of Mr. Brown, either by Government counsel or Bethlehem counsel, about the second chart prior to page 442 of Mr. Brown's testimony before Judge Roberts, which is on June 10, 1929.

THE MASTER: It seems to me, if the matter is one of importance, and either or all of you propose to refer to it, unless you can agree on just exactly what the fact was in the course of the examination and the extent to which the examination into that phase of his testimony was had, you had better put it all in and make it

a part of an Exhibit to this record, making it a physical Exhibit. Suppose we dispose of it this way, and, in view of the apparent differences of opinion that counsel have concerning what Mr. Brown testified to and when he testified to it, rather than take up the time of this proceeding now to settle that question, the Master will accept as a physical Exhibit, not to be incorporated into the record of the testimony here, all of the testimony of Mr. Brown in the previous hearing before Judge Roberts, with the understanding that if counsel can reach an agreement before the argument as to what part of it, if any, is to be used or not used, the Exhibit can be withdrawn; otherwise it will stand as a physical exhibit so that either side can refer to it and the Master can refer to it as the occasion may arise.

Redirect Examination

BY MR. BROWN:

Q. With respect to the manner in which you drew your total cost lines on your original chart, Exhibit 34½, it appears at the hearing before Judge Roberts, at page 202 at the notes of testimony, you testified as follows in answer to the following questions by Mr. Brown:

"Q. Now as I understand from what you just said, having obtained those two spots for the two classes of ships mentioned, you then followed a curve, did you not, between those two points?

A. I took those points, and what I did I think, actually, was, I had a batten.

Q. You had a what?

A. A batten.

Q. What is a batten?

A. A spline.

Q. A spline?

A. Yes, a piece of narrow wood that is faired up?

Q. What does 'faired up' mean?

A. It means it is perfectly smooth, by getting your line on a straight edge, it is about an eighth of an inch thick, it is a very flexible line, that is a batten, you take that and put it on a spot here, and spot here, and bring it down to here (indicating), off the end point here, that is held by, I will say ducks. Do you know what ducks are?

Q. I am learning.

A. They are weights. They are lead weights that have a piece of wire in the end of them, and you come down to a point and hold this batten in place, you put that on there, at the two points, and swing that around into here (indicating). Your idea is that up at this part, from here (indicating) along down to a point in here, that your ratio of increase in costs on ships of the same general specification will be approximately a straight line. It won't absolutely, it will show a little jagged line, but this will give you an average and that will be a fairly straight line, take from there and put a straight edge against that batten, to get that, and you will swing this around into here (indicating), so you will bring this down about as far as you want, and you will spot on it.

Q. Now, as I understand it you have a flexible piece of wood called a batten?

A. Yes.

Q. Which you put so that the edge will hit these two points for the ninety one hundred tanker and the fourteen thousand nine hundred and fifty ton tanker?

A. Yes.

Q. Is that correct?

A. That is right, but if that is all I had to deal with I would draw a straight line between the two of them.

Q. How do you get the curve with the use of this batten between those two points?

A. It is not a curve, it is a straight line, you can get a batten, a straight line—

Q. So you put your batten between those two points and drew a straight line along the edge of the batten?

A. No, it came from there (indicating) down to here (indicating).

Q. I am talking about these two points.

A. That is a straight line, yes.

Q. That is a straight line, and when you got below the point for the 9100 tanker you pushed the end of the batten and made a curve which brought it around to the lower left hand corner of the chart?

A. Yes.

Q. And the push that you gave it was based on your experience as an estimator?

A. That is right.

Q. And did you give it a little push based on your experience above the 15,000 ton line spot?

A. Well, I wasn't much interested above the 15,000 ton line because I didn't think there was

any possibility of our building ships above 15,000 tons.

Q. And when you came to the actual spotting of the other lump sum lines you drew the lines with the same batten, in much the same way?

A. May have been another batten.

Q. You think possibly you had another batten?

A. Yes, we had several.

Q. One was a little stiffer or a little more flexible than the other one, perhaps?

A. Yes."

Do you remember so testifying?

A. Yes, sir.

Q. That is correct, is it not?

A. Yes, sir.

BY THE MASTER:

Q. May I ask whether the article which is in my left hand is what you call a batten?

A. Yes, sir.

Q. That was offered before Justice Roberts at the previous hearing as an Exhibit?

A. Yes, sir.

Q. And what I have now in my right hand is what you call a duck, and this was also offered in evidence?

A. Yes, sir.

BY MR. BROWN:

Q. It appears you testified in that proceeding before Justice Roberts, commencing at page 211 of the testimony; as follows:

"Q. Now, with respect to the west coast cargo line, as I understand it you estimated that the cost of a West Coast tanker was approximately 5 per cent. more than the cost—

A. Yes, sir.

Q. —of an East Coast tanker, and you drew your line accordingly?

A. Yes, sir.

Q. Can you give us any explanation as to how you drew that line with your batten?

A. That is the same way, you took your, each of these points here, about 5 per cent., figured on a slide rule, it may be a little one way or the other, and you did the same thing.

Q. Making an appropriate curve by the push of the batten between the two extreme points?

A. Well, essentially, yes.

Q. In drawing that base line for tankers, East Coast, did you 'fair' the line, as you said in your testimony, which as I understand it would mean to draw a series of short lines, or did you just run your pencil along the edge in one continuous line?

A. Well, in one continuous line.

Q. In one continuous line?

A. Sure.

Q. And the same thing was done, as I understand it, with respect to all these other base cost lines, is that correct?

A. That is right.

Q. Is that correct?

A. Correct."

You so testified, did you not?

A. I did.

Q. And is that correct?

A. So far as that testimony is concerned, that is what I testified.

Q. Now it appears, commencing at page 218 of

the testimony before Justice Roberts you testified in answer to the questions:

"Q. All right. Now, when you came to the cargo East Coast line, as I understand your explanation it was estimated by you that the cost of a tanker of ten thousand dead weight tons would be about 15 per cent. more than the cost of a cargo vessel of the same tonnage, and that the cost of a tanker of 15,000 deadweight tons would be about 10 per cent. more than the cost of a cargo vessel of the same tonnage. You then took the points representing this differential in cost and spotted them on the chart from the line representing East Coast tankers and through such points you constructed the line marked 'Cargo East'?

A. That is right.

Q. And you constructed that line with the batten much in the same manner as you have already described?

A. Oh, substantially so, after I got one I may have taken the straight edge, may have rough handed part of it out.

Q. Well now, was there any occasion for not using the same method in constructing the cargo East Coast line that you had employed with respect to the Construction of these other lines?

A. Will you make that a little clearer, just what do you mean?

Q. Was there any occasion for your drawing the East Coast line in any manner different than the actual—

A. No.

Q. —workmanship of drawing the other lines, so that in all probability the lines were

all constructed with the batten in the same way which you have already described, and which you have already said they were?

A. May have been, yes, may not.

Q. May or may not, but you cannot think of any reason why one line should be constructed in a different manner than another line?

A. No, there is no particular real difference.

Q. And there would not be any occasion for having—there would not be any occasion, having determined your base line, for not putting on at the same time, all these other lines representing the total cost of these ships, would there?

A. Well, there might be, you may put on your tanker line, and you may be called away, doing something, and may come back a couple of days later and put on the other stuff, it doesn't necessarily follow that with a thing like that we complete it all at one time, especially under those conditions. You took such time as you had, and the cargo line may have been put on a week or two weeks later.

Q. But it is likely, as I have understood you to testify, that these lines were all constructed, as far as the workmanship goes, with this batten, and in much the same way?

A. Well, in pretty much the same manner."

You so testified, did you not?

A. Yes, sir.

Q. And that is correct.

A. That testimony.

Q. That testimony is correct, is that what you said?

A. That is what I said, taking, of course, that you have read it to me just as it is there.

Q. And it appears in paragraph five of Exhibit G-154, entitled "description of graph", reads as follows:

"5. It was estimated that the cost of a tanker 10,000 dead weight tons would be about 15 per cent. more than the cost of a cargo vessel of the same tonnage, and that the cost of a tanker of 15,000 dead weight tons would be about 10 per cent. more than the cost of a cargo vessel of the same tonnage. The points representing this differential in cost were spotted on the chart from the line representing East Coast tankers and through such points the line marked 'Cargo East' was so constructed."

That is correct, is it not?

A. Yes, sir.

Q. That explains the manner in which your cargo East line was originally plotted on the graph, does it not?

A. As given by that testimony, yes.

Q. And with respect to the explanation for the spots which you had on the East Coast cargo total cost line it appears that you testified before Judge Roberts as follows, commencing on page 222:

"Q. Now will you, showing you the original chart, exhibit G-34½, will you explain what the marks or spots enclosed in circles and appearing at the seven thousand ton, nine thousand ton, ten thousand ton, and the twelve thousand ton lines represent?

A. Well, they may have been in connection with the development of this line here, or this one (indicating) off through here, I can't tell you just exactly when those things were put on.

Q. Well now, with respect to such points when

enclosed in a circle on other lines there is usually some initials put opposite them representing one of the Bethlehem plants?

A. Well, that just happens, that is all.

Q. Is it likely those points I have referred to on the Cargo East Coast line also represented contract prices that were afterwards agreed upon between Bethlehem and the Fleet Corporation for this—

A. You mean these?

Q. —type and weight ships?

A. You mean these?

Q. The spots on the East Coast Cargo line which we have designated?

A. That (indicating), and that, and that?

Q. Yes?

A. No, they do not.

Q. They do not?

A. No, we did not contract any of that size vessels at all, that is enclosed in any of those spots.

Q. And at the present time you cannot recollect why those spots were enclosed into circles?

A. No, except ofttimes you put a spot on and idly run a circle around it.

Q. And will you tell us how the spot on the East Coast Cargo line opposite the eighteen thousand ton tanker was arrived at by you?

A. Where is the tanker?

Q. Opposite—for the East Coast Cargo ship?

A. You mean this—that is—

Q. Let me get that question straight?

A. Yes.

Q. Will you tell us how the mark on the East Coast Cargo line representing the eighteen thousand ton ship was arrived at?

A. Well, that is probably arrived at after this

curve is developed, and this one (indicating), you compromised between the two in order to get a proper line for your ton per deadweight."

Q. You so testified, did you not?

A. Yes, sir.

Q. And that is correct, is it not?

A. Yes, the testimony I believe is correct.

Q. And on the same subject it appears that you testified before Judge Roberts, commencing at page 224 of your previous testimony, as follows:

"Q. And you cannot explain to us, or at least I understand you to say you cannot explain why the East Coast Cargo line happens to hit the contract prices that were agreed upon between Bethlehem and the Fleet for the construction of 5100 ton cargo ships at the Harlan plant, under contract 314; and 7400 ton cargo ships under contract 178?

A. Why, these 5100 ton ships were taken at a much later date and we submitted a price for them. As I understand the Fleet Corporation accepted the price and it was taken from that curve.

Q. And these marks you think possibly might have been put on after those contract prices were agreed upon?

A. May have been, or may have been put on before, because those 5100 ton boats came in at a much later date.

Q. And what was the purpose of putting them on after the contract prices were agreed upon?

A. Well, there is no particular object in putting them on. Oftentimes sit down and says, "Going to build a 5100 ton boat," and make a spot on it.

Q. In other words, every time, as I understand it, that you agreed on a contract price with the Fleet, which was arrived at after negotiation and

after a reduction from the original price named by Bethlehem as the probable cost, you happened to find that that price agreed on hit one of these lines, and you got out your chart and put a spot on the line and drew a circle around it and said, "That represents one of our ships."

A. Not necessarily at all.

Q. Not necessarily?

A. No.

Q. Can you think of any other explanation for these marks getting on the East Coast Cargo line?

A. No."

Q. You so testified, did you not?

A. If that is the testimony, I did.

Q. If I have read your testimony correctly, you so testified?

A. Yes, sir.

Q. And that is the fact, according to your testimony that I read?

A. According to the testimony that I gave at that time.

Q. And, on the same subject, it appears you testified as follows at pages 271 and 272 of the previous testimony, in answer to questions asked you by your counsel, Mr. Wood: "Q. Now, I want to ask you just one question about these spots. Mr. Brown has speculated as to how they might have been there, and you said you don't know. Let me ask you this, take the spot on the 5100 ton cargo boat, that is on the chart, which you were asked to bid on at a somewhat later time?

A. Yes, sir.

Q. Let's find that spot now, if when you were asked to give Mr. Powell an estimated cost for the 5100 ton tanker from this chart—

A. Yes.

Q. —and running your eye along it, you would put your pencil on that point there for the purpose of following it down with the eye to the dollar mark, you would have made just about that kind of a mark, wouldn't you, you might have circled it and might not?

A. Might and might not, depends how sharp your pencil is, what kind of pencil you got, just happen to go along and may run it down there and may put a circle around it or something.

Q. You have got to put something on there to hold your eye while you get the dollars?

A. Well, I wouldn't.

Q. You wouldn't, all right. Maybe you didn't do it that way. You don't know how those spots—

A. No, I don't know how."

Q. You so testified, did you not?

A. Yes, sir.

Q. With respect to the Union stock ships, it appears that you testified as follows before Justice Roberts, commencing at page 225 of your testimony: "Now, you will recall that there were stock ships at Union, being cargo ships of 11800 ton dead weight, which were afterwards included in contract 191, do you not?

A. Yes.

Q. And you will note that on the 11,800 ton mark for the West Coast—on the 11,800 ton line for the West Coast cargo line, there is a spot on that line representing the 11,800 ton cargo?

A. All right.

Q. Can you explain how that point happened to get on that line?

A. No.

Q. Contract 191 for the Union plant stock ships included two ships of 11,800 tons dead weight and one ship of 11,700 ton dead weight?

A. Yes.

Q. And one ship of twelve thousand?

A. Twelve thousand.

Q. Tons, dead weight?

A. Correct.

Q. Being cargo ships?

A. That is right.

Q. Can you explain to us how it is that this cargo West Coast line happens to hit exactly the contract price that was agreed upon after negotiations and after reductions from your original estimate of probable cost for all three of those ships on all three of those type ships?

A. Yes, as I said before this was taken off of these curves, and the proposition was given to Mr. Powell, and he decided that that is about as low as he felt he ought to go on them and he stuck to it. Now, those ships were stock ships and had been started and materials got out, and the original quotation you received on those ships was from the Union plant before the incorporation of the Bethlehem Shipbuilding Corporation, and they are submitted on a lump sum basis."

You so testified, did you not?

A. If that is the testimony, yes, sir.

Q. If I have read it correctly you so testified?

Q. With respect to the necessity of your having three points in order to determine a curve, you testified, according to your testimony before Judge Roberts, beginning at page 227, as follows: "Q. Now, Mr. Brown; as probably one of the most expert estimators in the world, in December or Nov-

ember, 1917 would you not say that in order to arrive at an accurate estimate by use of such a chart system as adopted by you, that it would be necessary to have at least three spots from which to construct an accurate curve?

A. You have three. You got your zero and two others..

Q. You have your zero and two others?

A. Yes.

Q. Well, that is exactly what I would have supposed, and you will note, do you not, when I show you this original chart, Exhibit G-34½—

A. Yes.

Q. —that your zero point—

A. Yes.

Q. —is the point into which your cargo east line was originally constructed?

A. Well, we were these others carried down there, doesn't follow that you carry all your points down, you may put this in, it is a very heavy line, to see just what you are driving at, it may have been done with different pencil or a different time after this is on. When you get below 3,000 ton on a ship your line is probably of no use at all.

Q. You say more lines than the Cargo East line were carried down to zero on that chart?

A. No, I say you carried through on the proposition and may not have carried the line down—

Q. Wouldn't it be likely that you carry the line through to zero which was your base line in preparing the chart?

A. Not at all.

Q. You think you would first construct your base line without carrying it through to zero, and then on the basis of your base line construct another line

which you would carry through to zero?

A. That is very likely. You might quite possibly do it.

Q. What would be the purpose of carrying through the subordinate lines to zero when you knew it was never contemplated that there would be ships constructed, certainly less than five thousand tons?

A. Good many objects."

Q. You so testified, did you not?

A. Yes, sir.

Q. Now, with respect to the explanation which you gave before Judge Roberts for the erasures appearing at the lower end of East Coast Cargo total cost line, it appears you testified as follows, commencing at page 229 of the previous proceeding: "Q. If that was an explanation I didn't quite get it. Now, Mr. Brown, will you explain why on the original chart it appears that the East Coast Cargo line from 3,000 tons to zero has been erased?

A. Well, I cannot tell you. There is lines through here (indicating) also erased. There is lines through here (indicating) that have been erased. If you look at it there are a number of erasures on it.

Q. You cannot tell why?

A. No.

Q. —those erasures have been made?

A. No, I cannot tell you."

Did you so testify?

A. Yes, sir.

Q. And that is correct, is it not?

A. Yes, so far as the testimony is concerned.

Q. And, with respect to the erasures at the upper end of the East Coast Cargo total cost line, it appears you testified as follows before Judge Rob-

erts, commencing at page 230: "Q. And you can tell us why there have been erasures at the top of the East Coast Cargo total cost line which are barely discernable on the original chart?

A. I have a very hazy recollection of that, but they came in some time later and we had some argument, I think Mr. Powell, and myself, about the probable cost of ships or the trend of costs of ships in excess of the 14,000 tons or 12,000 ton ships which got beyond the physical capacity of the plant to handle, and my contention was these lines would run in off through here, and if not, through here (indicating). It was a question of just roughing off some lines in through there, in a matter of discussion.

Q. Now, just as a matter of discussion?

A. That is what I would say."

You so testified, did you?

A. Yes, sir.

Q. And on the same subject, at page 234 of the same previous testimony, it appears you testified as follows: "Q. And you cannot say definitely that those lines, as I understand it, were put on at the time of your original preparation of the chart or subsequent to it?

A. I don't know.

Q. You don't know?

A. No.

Q. Now, can you tell us why there were certain erasures made in connection with the extension of the cost per ton, Cargo East Coast line, so carefully that they do not appear except in a photostatic copy of the original chart?

A. Whereabouts, where are you talking about?

Q. I am talking about the extensions of the cost per ton, Cargo East Coast line?

A. You mean here?

MR. EVANS: Mr. Brown, you asked him to point out something on the original which you say is not visible. I think that is asking the witness to do too much.

THE WITNESS: Well, all right, I can explain that, Mr. Evans.

MR. EVANS: Let's see if you know what he is talking about.

THE WITNESS: I know what he is talking about, but as I explained to you before, this line—let me have your photostat—I can see what you are driving at, and you will find there is probably erasures at other places.

MR. EVANS: We show you the photostat that has been offered in evidence as Exhibit G-156.

THE WITNESS: Here is what he is talking about. You have got a line off in through here (indicating). You had some indications off through here, probably started curves, I don't know what it is, but this line here, this line developed along here, you will find there is a line probably appearing off of it in that manner. Now, that didn't look probably quite the way it ought to be, so you modified this curve, cost per ton dead weight, and erased the original proposition you had in here in order to get in your opinion what will be the proper cost per ton dead weight line.

Then you took this line here (indicating),

and you also probably modified that. I think you will find here is a line come along in here again, on this (indicating), before you may have arrived at what your differential actually would have been, and you will find this line here (indicating) is also somewhat modified, as a compromise between these lines again.

BY MR. BROWN:

Q. And as I understand it, you have no explanation as to why there were three lines drawn as extensions of the cost per ton, Cargo East Coast line, which were subsequently erased?

A. Only in the adjustment of the curves when they were originally made. Now, you take this—

Q. You don't know why those lines—

A. No.

Q. —were originally put on the chart?

A. No, except in the development of it. Now, you take that line, you got there, maybe there is a question came up on a discussion of this business—

Q. In other words?

MR. EVANS: Let him finish.

THE WITNESS: Let me finish.

MR. BROWN: I thought you had.

THE WITNESS: No. This curve line, going back here, which may have been a line drawn either at the time or subsequent to it, if it comes up, and if you argue that has got up to 15,000 tons and you have got the capacity of your punches and shears in your shop, and conclude to build above that, and have got to go to a different system, by additional tooling, for drilling your holes, we will say as an illustration, instead of punching them, your cost per

ton, dead weight, is going to rise, and it is not going to be a continual decrease, instead of putting a decrease on your line through there (indicating) and a gradual decrease the less you go, you may get a point of increase. This line in here may have been part of the development of this proposition off here, and this was used simply because we didn't think it was any good and then was cut out in the clean-up.

BY MR. BROWN:

Q. In other words, as I understand it these extensions to the cost per ton Cargo East Coast line were probably lines that were put on there in the development of this chart?

A. No, they were probably put on there afterwards.

Q. They were probably put on there afterwards?

A. Yes.

Q. Although you cannot remember when they were put on?

A. No.

Q. Or why they were put on?

A. Absolutely not.

Q. And you cannot remember, as you cannot remember that, how it is that those three lines which have been put on as extensions to the cost per ton Cargo East Coast line happened to coincide exactly with the three extensions of the total cost Cargo East Coast line that are nearest to the final cargo, East Coast line?

A. Well, that may be.

Q. But you cannot tell us how?

A. No

Q. That happens to have worked out?

A. No."

You so testified, did you not?

A. Yes, sir.

Q. And continuing your testimony where the previous quotation left off, it appears that you testified in the hearing before Judge Roberts as follows:

"Q. You cannot give us any reason why that originally—why that East Cargo line is apparently a line which was constructed after considerable thought, shown by the character of the line, its heaviness at certain points, as the original base line of the chart?

A. Well, it wasn't the original base line of the chart.

Q. It wasn't the original base line of the chart?

A. I am absolutely, definitely positive of it.

Q. But you cannot tell us why the line which you say was the base line for this chart, being the tanker East Coast line, is a thin line which is apparently constructed without any difficulty along the edge of a batten?

A. That is quite right.

Q. And although the Cargo East Coast line was plotted from two points determined from that base line you cannot tell us why it has the appearance of being a heavily constructed line, constructed after considerable thought and several attempts to reach a proper line?

A. Oh, no, I can't tell you that.

Q. You can't tell us how that happens?

A. Oh, no.

Q. Would it refresh your recollection on that subject if I told you that the correspondence shows that up to December 12 there is not one word in the correspondence which indicates that

the Bethlehem Company is not to be permitted to construct the type of ship with which it is familiar and which it preferred to construct with the exception of transports, and that Bethlehem during the period from June to December 13, indicated that its decided preference was to construct cargo ships, and that it was clearly contemplated that it would be permitted to construct cargo ships, and that even after conference on December 12 with representatives of the Fleet, when tankers were suggested, that Bethlehem in its proposal of December 13 states alternative propositions for each plant, stating that its decided preference for construction at each plant would be cargo ships, duplicates of those named in the proposal. Will that refresh your recollection?

A. Not at all.

Q. As to the reason for the appearance of the Cargo East Coast line?

A. No.

Q. And in spite of that history of the transaction you would say—

MR. EVANS: Well now, just a moment, Mr. Brown. That is your history. You do not pretend to say that is in the evidence, do you?

(Argument off the record.)

MR. EVANS: Go on, I withdraw any objection.

BY MR. BROWN:

Q. And you will say, looking at this chart and with that back ground that I have given to you that it is not natural to suppose that that Cargo East Coast line was constructed as the

base line for that chart, after five preliminary efforts to arrive at a proper line for the total cost of the East Coast line, and that with respect to the last three of the preliminary efforts you then constructed corresponding curves, preliminary curves, for the cost per ton, East Coast line, that you were not satisfied with those preliminary efforts, that all those preliminary marks were erased, and that you finally determined that this final line representing the East Coast Cargo line was correct, and accordingly plotted a final line for the East Coast Cargo per ton line?

A. It might be quite possible, Mr. Brown, I started it with this thing, with the tankers, when I came up to the cargo vessels it is quite possible I drew these lines off here, and smudged with these lines (indicating) before we submitted any figures whatsoever, I don't know.

Q. Will you explain how that would be possible, how those preliminary lines representing flares off from the final lines would be possible if the Cargo East Coast line was constructed as you had explained in documents which have been offered in this case, by basing them upon two points determined by taking certain percentages from the tanker East Coast line?

A. Just repeat that question, please.

(Question repeated).

THE WITNESS: Why, you simply construct your line as you constructed your other lines, you got your two points on it and drew your line between them.

BY MR. BROWN:

Q. But your two points to construct that

line were the points at the 15,000 ton and the—

A. Yes.

Q. —a point at the 10,000 ton line?

A. That is right.

Q. And you know the preliminary flare-offs commence at 11,000 ton line?

A. That is right. That is quite right.

Q. You think in constructing that line your batten may have slipped from the top point representing the 15,000 ton line?

A. Not at all."

You remember so testifying, do you not?

A. Yes.

Q. And that testimony is correct, is it not?

A. The testimony is correct.

Q. Now, as I understand your testimony given in answer to questions by Mr. Evans this morning, you stated that at the time you prepared this chart that Mr. Schulze, while the head of the Estimating Department, was estimating solely in connection with changes and extra; is that correct?

A. What estimating they were doing was in connection with changes. Whether they were doing any I don't remember.

Q. That is what I understood, whatever estimating was being done, it was his function to do it and he was there prepared to do it?

A. Such as was assigned to him, yes.

Q. Such as was assigned to him would have been done by him and that is why he was there, was it not, as head of the Estimating Department?

A. Yes.

Q. And on that subject it appears that you testified as follows before Mr. Roberts, commencing at

273 of the testimony, in answer to questions by Mr. Wood:

"Q. You stated on re-direct examination that in your organization that you perfected in November Mr. Schultz was made chief estimator?

A. Yes, sir.

Q. What was he doing as chief estimator in November and December?

A. He was trying to get settled, for one thing, and trying to get a force together.

Q. Well, what were the functions of the estimating department as it functioned under him and after its creation?

A. Well, they did all the estimating, all the costs for new work and the costs of changes under present work.

Q. Well, you say cost of new work. You didn't make any estimates—

A. You asked what the purpose of such an office was.

Q. No, I am asking what they did, what they did?

A. Oh, they principally estimated the cost of changes until we came to the estimated costs of the transports, when they made a detailed estimate on it.

Q. Yes?

A. And they also had some other work that came in from the board which they made a detailed estimate on that."

You so testified, did you not?

A. Yes, sir.

Q. As I understand it, you started to work on this explanation of the chart, the result of which has

been presented in evidence as G-154, on your return to Bethlehem in November, 1924, is that correct?

A. Yes, sir.

Q. This is a matter that I do not want to have you go into unless it is necessary, but in your testimony this morning you indicated that there was some doubt in your mind as to whether your second chart, constructed in Washington, was constructed from one spot or whether you remembered other spots and also used them in connection with this preparation. Now I ask you again whether that chart was constructed from the one spot which you remembered for a tanker of 10,000 dead weight tons, or whether other spots were used in connection with its preparation?

A. That I can't tell you.

Q. Then I take from your testimony before Mr. Roberts, starting at page 442 of your previous testimony, in answer to questions by Mr. Evans, and this refers to your Washington work:

"Q. You took an ordinary sheet of ruled foolscap?

A. What we call a scratch-pad.

Q. A scratch-pad, but it was ruled?

A. Yes.

Q. And you made that into a cross section sheet by drawing vertical and horizontal lines?

A. One set of lines were on, and I drew the other set of lines. I then recalled a spot I had on the curve, and I placed that spot on there, and I reconstructed my curve as nearly as I could.

Q. What spot did you put on?

A. I put on a spot which was an outstand

ing spot, of a 10,000 ton East Coast tanker. It was a very easy one to remember, because it was exactly $200. a ton.

Q. That is what you had in mind?

A. Yes, sir. So I plotted that, as I say, as nearly as I could recall, from memory. Then I took off from that curve, which was tankers, the spots for the other sizes of ships on which we were going to submit proposals, and I knew from experience, which will be quite apparent, that if you have a spot located at a point there (indicating) it does not run in a straight line; that is not the nature of the cost. Any vessel below that spot must be a line somewhere under that straight line, and any vessel above that must be in a line somewhere above it. So you can take and reconstruct a curve from any one given point and project a line of that description (indicating).

Q. When you made your original point, you had three points?

A. I had the zero and two other points."

BY MR. BROWN:

Q. That refers at that point, as I take it, to the first chart?

A. Yes, sir.

"Q. When you reproduced that from memory in Washington, you had only two points?

A. Zero and ten thousand.

Q. The reason you selected ten thousand was because that was an outstanding figure in your mind because it was exactly two hundred dollars a ton?

A. Yes.

Q. With two points, will you explain how you get the drift of the curve?

A. Just as I have explained here, having that as a straight line wouldn't give you the relative cost of ships, due to sizes of the smaller types, and that below this it must be somewhat larger. Various elements entered into that. Mr. Sanford touched upon that in his testimony. The smaller the ship, the larger the cost per ton dead weight. The one point he had not touched on, which is a large factor in the question of cost, is that the per cents of the light weight and the dead weight in the smaller ships will be larger than on the larger ships.

Q. The point I want to make clear is that having the two points, that is, zero and your ten thousand ton tanker, by your experience and familiarity with this kind of work, you knew approximately what the drift of the curve would be?

A. Yes."

You so testified, did you not?

A. Yes, sir.

Q. Was that the occasion on which you explained to Mr. Powell in detail the factors and figures which you had used in connection with the construction of your first chart?

A. It was either that or some time previous to that. The fact is that I explained it to him at some time before—I cannot just definitely say the exact time that it was done—I would like to very much.

Q. Well, as I understand it, it was either on this occasion or six days prior, namely December 12, was it not?

A. Well it may have been earlier than that.

Q. It may have been earlier than that?

A. Well it may have been because when you are working on these things, as a rule, you would take them up with Mr. Powell.

Q. As I understand your previous testimony when I examined you, you testified that you had no discussion of this chart with Mr. Powell from the time he originally ordered you to construct it until the conference of December 12, at the earliest, in Washington; is that correct?

A. I may have stated that.

Q. But at any rate you think that at the time you reconstructed this second chart in Washington that Mr. Powell had been told in detail all figures and factors used by you in connection with the preparation of your first chart?

A. I believe that would be so.

Q. You think it was so?

A. I think so.

Q. And do you think that was probably explained to him before you attempted to reconstruct this chart in Washington?

A. Yes.

Q. How long before?

A. I don't know.

Q. You think it was before that time?

A. I think so.

Q. And with respect to Mr. Powell's allowance of approximately $10.00 per ton as an addition to your chart figures, it appears that you testified as follows before Judge Roberts on pages 448 to 450 of your testimony:

"Q. Mr. Brown, I observe that in the letter of December 19th the proposed price for a 10,000 ton tanker was $216 a ton?

A. Yes.

Q. As compared with your price of $206?

A. Quite right".

And then skipping to page 450 referring to the same ships:

"Q. Outside of that, for which your explanation is reasonably obvious, you do not recall by what process of calculation, mental or otherwise, Mr. Powell arrived at his figure of $2.16 as against your $2.06?

A. No, sir.

Q. Can you tell us whether he had any other figures which he threw together, any figures from your Accounting Department or your Estimating Department?

A. I don't recall that he had any.

Q. Can you say whether or not that figure, however it was arrived at, was built up from your figures or whether it was built up independently?

A. Built up from my figures."

Did you so testify?

A. Yes, sir.

Q. And, as I understand, you have already testified that the only figures you had at the January 3rd conference was figures that you had taken from your chart and submitted to Mr. Powell; is that correct?

A. That is the best of my recollection.

Q. Of course when I said the only figures you had I am referring to you and Mr. Powell?

A. Well, that is what I understand, and also as applied to this particular subject. We had a copy of other figures applying to other things.

Q. We are talking about the figures in controversy.

A. Yes.

Q. It appears you testified at page 196 in the previous hearing:

> "Q. And I think you have already testified to that effect, or else it has been admitted in evidence, but I will ask you again, all the contract proposals were made on the basis of this chart that was made by you?
>
> A. They were used as the base for the proposals."

You did so testify, did you not?

A. Yes, sir.

Q. With the cost available to you at the time this original chart was prepared, it would have been a very simple matter for you to have determined the current cost of Fore River Hull 251 which had been completed during January 1917, as compared with the returned cost of that ship in much the same manner as you did in connection with Hulls 253, would it not?

A. Are you reading testimony?

Q. I am asking you a question.

A. Pardon me. I didn't know whether you were reading testimony.

Q. (Previous question repeated).

A. Yes, sir.

Q. Have you the data which you used in connection with your investigation as to whether your allowance of 30 per cent. for anticipated decrease in efficiency of labor had been exceeded or otherwise?

A. No, but I can get it for you.

Q. Where is it?

A. I think you will find it in the New York office.

Q. Why didn't you bring it with you?

A. I didn't know what you would require.

Q. You did not know you were going to testify with respect to it?

A. No.

Q. Will you tell us just what you did in making the investigation and in reaching the conclusion which you have given to the Master?

A. Well we reduced it to an hourly basis of construction on the vessel which will be a measure or indication of hours worked.

Q. What cost did you reduce, what ships?

A. Cost of labor on 253 and 254 and 268 and 269 and then the contract ships at the Fore River.

Q. What contract numbers are you referring to?

A. The 9100 ton tanker. They only had two contracts there.

Q. And they were two ships that were not completed until long after the Armistice, as I understand?

A. That is right.

Q. Are you stating that in some manner you broke down the efficiency of labor with respect to those ships as it existed prior to the Armistice as compared with efficiency referring to the same ships after the Armistice?

A. Carried it right through with the ships completed in 1917 and then the subsequent ships were completed around about the time of the Armistice or maybe a little later or before, with the ships that were completed subsequent thereto.

Q. Now you are referring to ships that were built in Fore River under contract No. 183?

A. That covers 3, 9100 ton tankers?

Q. I understand that it does.

A. Yes.

Q. Let me tell you the dates they were completed and you will see what I am getting at. I am stating for your information it appears that one of these ships was completed July 16, 1919, the second August 13, 1919, and the third September 19, 1919?

A. Yes, sir.

Q. Will you go ahead with your explanation.

A. Well it was merely a question of reducing the direct labor cost of the ship into hours and if you had a difference in the hours between the two ships that represented substantially your efficiency factor.

Q. Did you take into consideration any items of overtime, piecework or premium work, or anything of that sort, that might have been different during war conditions than after the Armistice?

A. I was just thinking whether that would make any difference or not if you ran the same proportional amount of piece work it would be the same thing.

Q. I am asking you. This is a technical matter and I don't have much knowledge of it?

A. I am trying to explain to you that I don't want to withhold anything if I can help it, but you are asking me a question.

Q. Don't you think it would be better to bring that data here?

A. It probably would not help me. If I have the figures I can answer that probably as well now as at any time.

MR. BROWN: I think this is a matter of great importance, and, with the permission of the Master, I would like to get something we can

cross examine on or which our witnesses can investigate and see whether Mr. Brown's result is approximately correct rather than simply take his statement that he made an investigation, and that is what he says.

THE MASTER: I assume that is available, if you want it.

MR. EVANS: I will say if it is available we will be very glad to produce it.

BY MR. BROWN:

Q. Do you mean to say the data which you used in this computation is not available?

A. The last time I was in New York and looked into the cases, and this was before the trial before Mr. Roberts, they were there. I have not looked for them since.

Q. You say the data was there?

A. Yes, and I assumed it was still there.

Q. There was no mention of this subject at the hearing before Judge Roberts?

A. I know it wasn't but I looked in case you did mention it.

THE MASTER: I am afraid I am responsible for opening up this matter by the questions that I asked.

MR. BROWN: Yes, and you have started something that we will have to finish.

BY MR. BROWN:

Q. Is the data available from which you made your computation?

A. The data I acquired from the Accounting Department is available.

Q. And is that all the data that you used in con-

nection with the explanation which you gave Mr. Mason?

A. On the relative efficiency. That is what I based it on. There is no other way to get it.

Q. In other words, all the data on which you based your conclusion that your efficiency was decreased more than 30 per cent. is now available; is that correct?

A. I believe it is.

Q. And, in view of the fact that the efficiency of labor apparently decreased even more than your estimate of 30 per cent., can you now explain to us how Bethlehem effected a saving of approximately $670,000 on each of the stock ships covered by contract 199?

A. I cannot.

Q. It would be rather difficult to explain how such a saving could be effected, would it not, by inefficiency of labor increased in excess of your anticipated 30 per cent.?

A. Well, I don't see how you could be expected to know anything about that. I wasn't out there and I didn't know anything about their operations at the plant.

MR. BROWN: I offer the document previously offered as Exhibit G-3, showing the dates agreed upon by all parties upon which the hulls therein referred to were delivered by the Shipbuilding Corporation to the Fleet Corporation.

(Admitted without objection as Exhibit G-3.)

MR. BROWN: Before I pass on to something else, I deeply regret it but I think it is important to the Government's interest that

it should have the data from which Mr. Brown made his computation to which he has been testifying.

THE MASTER: The Master understands an examination will be made of the files of the Bethlehem Company and if the data is there, and the witness expects it will be, it will be produced, and I further understand that if it is not there an effort will be made to reproduce it from The Accounting Department where the original figures came from and it may take some little time, though it will be available if the Government needs it. The latter is my own addition.

BY MR. BROWN:

Q. Were the figures quoted in your December 9 proposal for a tanker of 9100 dead weight tons supposed to represent an average price between East and West Coast cost of such tankers?

A. Yes, sir.

Q. And that is true although you were submitting proposals which related only to East Coast tankers of that tonnage, was it not?

A. Yes, sir.

Q. It is true, is it not, as you have already testified, that you never used in any way the working papers which you originally used in connection with the preparation of this chart known as Exhibit G-34½ after its preparation?

A. Never used the figures?

Q. Never used the working papers? Is the question clear? The question is, as I understand you have previously testified, after your construction of this chart, known as Exhibit G-34½ you never made any use of the original working papers which

you had used in connection with the preparation of the chart.

THE MASTER: That is not exactly his testimony, because, as I understood it, he told me today that in discussing it with Mr. Powell he may have used whatever papers he had then, or he may not. He was not quite sure.

BY MR. BROWN:

Q. I did not so understand it.

THE MASTER: That was my understanding of his testimony. His recollection was not clear as to whether he had or had not but he probably had, or thought it very likely he had.

BY MR. BROWN:

Q. Is that your understanding?

A. That is my understanding.

THE MASTER. He did not say positively that he had not used them in answer to my question.

BY MR. BROWN:

Q. You testified, as I remember today, at the hearing before Mr. Roberts and at the present hearing as appears from page 130 of the present transcript as follows:

"Q. As I understand it, after the preparation of the original chart, you kept none of the original working papers or data employed in its preparation is that correct?

A. No, they were not kept.

Q. So that whatever the working papers or data may have been, they were never used by you subsequent to the preparation of the original chart is that correct?

A. That is correct."

Did you so testify?

A. I did.

Q. Both at the hearing before Mr. Roberts and at the present hearing?

A. Yes.

Q. And that is correct, is it not?

A. Well, wait a minute. You ask me is it correct. The question is whether I just understand what you are making it when you asked me if I used them afterwards. I don't understand you mean if I used them for purposes of a chart or for some other purpose or not, or whether I showed them to somebody or whether I took the figures off them for explanation. That means something different to me.

Q. What is your present recollection as to the use, if any, that you made of your original working papers and data used in connection with the preparation of this original chart?

A. Well my recollection is very dim about it. It is more than likely that I did take them up with Mr. Powell.

Q. Well, can you recollect that you took them up with Mr. Powell?

A. Well that was a natural thing for me to do.

Q. You think it is likely that you showed him these original working papers and data, whatever they were, in connection with your explanation of the chart to him?

A. I think it is most probable I did.

Q. And, as I remember your testimony, that was done either at the December 12th conference in

Washington or the December 18th conference; is that correct?

A. It would hardly be at the December 18th conference at Washington. It could not have been, because I did not have them there, so it must have been some time previous to that. Another thing, after you have a matter of this kind, unless you got some specific purpose on it; you are not likely to carry those things with you. You would only carry the finished chart and not the working papers.

Q. At any rate you have no recollection of having shown these working papers to anyone subsequent to the preparation of the chart; is that correct?

A. No distinct recollection.

Q. And with respect to the 50 cent rate which was intended to represent the average earning rate under the Navy Yard scale, it is a fact, is it not, that you did the estimating in connection with the determination of that rate?

A. I may have done part of it, the Accounting Department may have done part of it and I may have guessed at what could not be gotten, or the Accounting Department may have guessed at it.

Q. Do you think it is likely that you had data referring to that item at the time of your preparation of the chart?

A. Well I have some sort of recollection that at the Fore River plant, when they were ordered to put that in—I wouldn't say ordered but when it was approved to be put in—that there was the rates obtained from the Navy Yard and I think that there was a comparison made at that time, but that would be on the day rate basis, to my

recollection. Now you have to increase that for the earning rate, because the Navy Yard had very little piece work, if any, and then it becomes a different question. If you have to increase your piece work it is in proportion to your hourly rates. There are many things to consider. Now, as I recall, that was all taken up at the Fore River as to what effect it would have, but what the actual thing would be after being put into operation is something else.

Q. What I am trying to get at is your recollection as to whether you did have data showing figures, prepared by someone, either yourself or someone else, showing how this 50 cent rate was determined in connection with your preparation of this chart?

A. We had some data on that, yes.

Q. Well don't you think you had sufficient data at the time you prepared this chart to show in itself the manner in which you arrived at this 50 cent rate?

A. I haven't anything that I can produce.

Q. I am not asking you that. I am asking you whether at the time of the preparation of this chart it was a fact that you had some data or working papers, whatever their nature might have been, which would have enabled anyone, either in your position or anyone who had access to that data, to determine the manner in which this 50 cent rate was determined?

A. I should think so, yes.

Q. You think there was such data originally available?

A. Yes, sir.

Q. And, in view of the fact that you were to have labor protection under these contracts, it was

very important, was it not, that such data should be preserved in order to determine the increased wage cost which would be added to the base price of the contracts?

MR. EVANS: Don't you think that is a matter that calls for the construction of the contract?

BY MR. BROWN:

Q. Didn't you consider it very important to preserve such data in view of the fact that Bethlehem was entitled to a wage protection under its contract, and that it would be necessary to have the base labor rate in order to determine the amount of increase in labor cost that was to be added to the base price of the contracts?

A. I should say that it would not be so important to keep those papers that were utilized to arrive at your earning rate figure, that is, at least for the preparation of an approximate estimate.

Q. In other words, the work that you did, as I understand it, could very easily have been done all over again by the Fleet representative and by the Bethlehem representatives in order to determine, if they could, just what rate had been used in connection with your original estimates; is that correct?

A. No, because my rate was an entirely different rate than your adjusted labor rate.

Q. Wouldn't your rate have been helpful in enabling the Fleet representatives and the Bethlehem representatives to determine and adjust the controverted base rate which in turn determined the added labor cost to be added to the base cost of these contracts?

A. No.

Q. It would have been absolutely of no assistance whatever?

A. I think not.

Q. You remember that it became a very much controverted point, do you not, the controversy running along several years, as to what was the agreed base rate for use in connection with determining the labor cost to be added to these rates?

A. I had nothing to do with it.

Q. But you never volunteered any assistance to the Fleet representatives, did you, at the time of this controversy, to aid them in determining how the base rate had been determined in connection with Bethlehem's estimates?

A. Never.

Q. With respect to the question of tugs that were referred to in Mr. Evans's examination, I want to quote from your testimony at pages 515 and 516, before Mr. Roberts, in answer to questions by me:

> "Q. What information did you have with respect to the tugs you had previously constructed at Fore River?
>
> A. We had some tugs constructed at Fore River, and Mr. Powell had some constructed, I believe, at Cramp's, but we didn't have detailed information.
>
> Q. Did you have as much cost data as the data you had in connection with 253?"
>
> A. We probably did have.
>
> Q. You probably could have made the same cost analysis as on 253?
>
> A. Yes, but these tugs were entirely different tugs.

Q. You do not think this cost data would have been of much assistance in preparing the estimates?

A. It would have been of some assistance.

Q. It would not have enabled you to arrive at an approximate estimate?

A. It probably would have.

Q. But you did not make use of the data?

A. No.

Q. It was more or less of an educated guess that you made as to the cost of the tugs?

A. Yes.

Q. So that the tugs were more or less in a class with the troop ships when it came to making an estimate of the probable cost?

A. No, because troop ships run into millions of dollars, while tugs do not."

You so testified, did you not?

A. Yes, sir.

Q. I meant to ask you on this question of labor whether the effect of your method in preparing the original chart was to estimate the labor rate of all the East Coast plants at 50 cents, the same as in connection with Hull 253?

A. Well that you cannot tell. You may have a lower rate at another plant and may have considerable more hours, so while they utilized the 50 cents rate at the Fore River as far as the percentage of piece and premium work, at the other plants are concerned it might show a higher rate but a lower cost. Now on 158 and 159, which was the Sparrows Point vessels, you increased the ratio of the cost in the same proportion that you did at Fore River, and if they had a lower rate at the

period of construction than they had at Fore River, naturally you would show a lower rate at the time you made your comparison, but the comparison of rates from one plant to another—I don't think has very much bearing except you go into a close examination of the hourly rate.

BY MR. HALLETT:

Q. Then also it does not necessarily follow that the rates you estimated for the West Coast was 10 per cent. higher as you have stated and therefore 55 cents as the rate which you actually estimated for the West Coast?

A. That would be taken into consideration with how your relative labor costs run. We felt that at the Fore River plant we had just about as efficient organization that could be gotten together and if you had at the Fore River plant a cost, say just for purposes of illustration, at $80. a ton dead weight, and at the Union plant on the West Coast they had a cost of $85. dead weight ton, it would show—

Q. Are you through?

A. Yes.

Q. Then the effect of your estimate or method of estimating was that you did establish a 50 cent rate as the rate applicable at Fore River?

A. Yes, sir.

Q. But that at the other plants you established by the method of drawing the chart no particular rate?

A. That is right.

Q. That was in effect at that particular time?

A. That is right.

BY MR. BROWN:

Q. As I understand it, in the course of your

negotiations which took place with the Fleet representatives in December 1917 and January 3, 1918, it developed that the Bethlehem was unwilling to accept these ships on a lump sum basis, did it not?

A. That is correct.

Q. In other words, Mr. Powell refused to take these ships in controversy under a lump-sum contract?

A. Yes, sir.

Q. And up to the close of the conference on January 3rd, Admiral Bowles was insisting on the lump-sum form of contract, was he not?

A. He was.

Q. And finally, as a result of Mr. Powell's refusal to adopt the lump-sum form of contract, Admiral Bowles finally asquiesced in the half-saving form of contract; isn't that correct?

A. That is as I understand it insofar as Admiral Bowles's connection with these contracts was involved.

Q. Now, as I understand it, it was Mr. Powell's position at that time that he would not accept lump-sum contracts because under that form of contract Bethlehem would be limited to the contract price regardless of what the actual costs might prove to be; is that correct?

MR. EVANS: Objected to unless the question is directed to something that Mr. Powell said to the representatives of the Fleet Corporation.

BY MR. BROWN:

Q. Well, Mr. Powell went into his reasons for his refusal to accept the lump-sum form of contract very fully, did he not, at a conference with the Fleet officials?

A. Well that you will have to ask Mr. Powell about for he had many conferences with Mr. Piez with reference to the contracts that I wasn't there.

Q. You don't remember his reasons for refusing to accept the lump-sum form of contract?

A. No.

Q. And would you say you have no idea as to why Mr. Powell refused to accept lump-sum form of contracts for these ships?

A. Well my idea is pretty clear on it.

Q. What are the reasons?

A. In the first place, we had just been engaged—

THE MASTER: Do you think this is helpful?

MR. BROWN: Yes.

BY MR. BROWN:

Q. Do you know Mr. Powell's reasons for refusing to accept lump-sum form of contracts?

A. Yes, the absolute unsettled condition of the market, the very hazardness of the business and the volume of work that he was undertaking.

Q. In other words, as I understand it, in view of the uncertainty as to what the actual cost might prove to be, Mr. Powell refused to accept lump-sum forms of contract which would have imposed upon Bethlehem the possible occurrence of such contingency. Is that a fair statement?

A. You better ask Mr. Powell about that. I can't tell you what was in Mr. Powell's mind.

Q. But, so far as you know—I don't know whether this is a fair summary of your testimony—if Mr. Powell had any definite reasons for refusing to accept a lump-sum form of contract it is a mat-

ter that was of no special concern to you at that time. Is that correct?

A. That is right.

Q. Did you regard your chart prices here plus whatever fixed fee might be agreed upon, as equivalant to a lump-sum price which would be acceptable to Bethlehem for ships such as those in controversy?

A. Did not consider it in that light at all.

Q. Would your prices here have been proper prices, in your opinion, for the basis of lump-sum contracts?

A. You are asking me to give an opinion now?

Q. I am asking you as to whether or not in your opinion, as a very experienced estimator of costs, these prices shown by your chart were regarded by you at that time as fair and proper prices to be inserted in a lump-sum form of contract?

A. I would not have taken a lump-sum form of contract from anybody at that time.

Q. And why was that?

A. On account of the uncertain conditions that were existing. It would become a highly speculative proposition.

Q. In other words, no matter what the probabilities may have been, there was a possibility, for instance, that material costs might have increased during the period contemplated for construction. That is correct?

A. That is correct for any company.

Q. And likewise there may have been an increase in labor rates during the period contemplated for construction?

A. Well it was understood you would have protection on that so it would not enter into it.

Q. And also it was possible there would be a decrease in the efficiency of labor, was it not?

A. Yes, sir.

Q. And there was a possibility of strikes occurring during the period of construction, was there not?

A. Yes, sir.

Q. Likewise a possibility of increase in freight rates?

A. Yes.

Q. And a possibility of increase in existing transportation difficulties?

A. Yes.

Q. A possibility that your position on the priority list might be changed?

A. We did not know much about priority then. I think that was developed a little later.

Q. With respect to material?

A. Yes.

Q. You didn't know much about that?

A. No, not at that time, excepting that we knew we would get priority in the construction of the Destroyers.

Q. Then there was a possibility of your priority as to the draft, that it would be affected, and you would be unable to obtain a supply of labor?

A. Yes.

Q. So it was in view of all these possible contingencies that you would have been unwilling to accept the lump-sum form of contract?

A. Personally I would have been unwilling.

Q. And, as I understand it, you would not have accepted a lump-sum price unless it was so big that it might properly be termed a whale of a price, and so big that Bethlehem could not afford not to take it?

A. You are asking me my personal opinion?

Q. Yes, your personal opinion.

A. I would not have taken it no matter what the price was. That is my personal statement.

Q. And if there was any lump-sum price acceptable to you it would have to be consequently very much in excess of the price shown by your chart plus the fixed fees agreed upon?

A. I would not have taken them on any basis whatsoever. It is understood that is my personal views in the matter.

Q. That, as I understand, to summarize it, was because there were all these possible contingencies which, no matter how probable or improbable, might have occurred, and it was impossible to prophecy their effect, and consequently, no matter what the lump-sum price might have been, Bethlehem might have found themselves on the short end of it, and other builders took the same view?

A. The old line builders did.

Q. The old line shipbuilders all took the view, just as you expressed it, that if they were to accept lump-sum contracts that the prices would be so high they would necessarily take into consideration the possible occurrence of all these contingencies that we have spoken of. Is that correct?

A. I couldn't state for them. After the conference held on the Destroyers they didn't want them, wouldn't take them on a lump-sum basis.

Q. You are the one suggested this about other shipbuilders. It is a fact, is it not, that no shipbuilder would accept the lump-sum price unless it was so high that in their opinion they could offer them adequate protection against the possible occurrence of all these contingencies we have been discussing; isn't that correct?

A. Well how do you expect me to answer for the other shipbuilders?

Q. You were one of the most experienced shipbuilders in the country at that time, you knew everything that was going on about ship construction and it was your duty to know it. Now didn't you know sufficient to enable you to answer the question that I have asked you?

A. In reference to what was in the minds of the other shipbuilders?

Q. No.

(Question repeated as follows: It is a fact, is it not, that no shipbuilder would accept a lump sum price unless it was so high that in their opinion they could offer them adequate protection against the possible occurrence of all these contingencies we have been discussing. Isn't that correct?)

A. I don't know.

Q. Well, would you agree with the statement which was made in a brief filed by Mr. Cravath's office with the Attorney General during the course of this litigation, stating that the rapidly changing prices of labor and materials and other conditions which obtained late in the year 1917, made contractors most reluctant to make lump-sum contracts for the construction of vessels, and they could be induced to make them only at prices which required the Fleet Corporation to assume risk of increased cost. Would you agree with that statement?

A. Yes, I will agree with that statement.

Q. Well, that is all I am getting at.

A. All right.

Q. Now the great advantage of the Half-savings contract, as I understand it, was that the Govern-

ment would not be called upon to pay a lump-sum price which because of its allowance for these contingencies would in all likelihood prove to be very substantially in excess of the actual cost plus a fair profit, was it not?

MR. EVANS: Is Mr. Brown questioning him as an expert on contracts or are you asking him if this is the result of discussions they had with Mr. Piez or Admiral Bowles?

THE MASTER: I was wondering whether the witness is competent to express an opinion that would be helpful to anybody as to whether or not that might have been advantageous to the Government.

BY MR. BROWN:

Q. Did you understand the intended purposes and advantages of the Half-savings form of contract?

THE MASTER: Does that make any difference?

MR. BROWN: I don't know whether it makes any difference whether he understood it.

THE MASTER: What I am trying to get clear in my head is what difference it makes what this witness understood as to the motives for making any form of contract?

MR. BROWN: He is the man that prepared the estimates and suppose he prepared them on a lump-sum basis, as we contend he did, that makes the difference.

THE MASTER: I do not see it is going to be helpful to us to get his interpretation of what was the understanding of the various people

concerned as to their motive for making this form of contract.

BY MR. BROWN:

Q. You were familiar, were you not, in a general way, with the confused conditions prevailing in the Emergency Fleet Corporation at the time of your negotiation in December, 1917?

A. Yes.

Q. And, to sum it up, these officials of the Fleet Corporation at that time were literally swamped with work, were they not?

A. I wouldn't say they were so literally swamped with work.

Q. Mr. Piez, at that time, as general manager, was undertaking the organization of the Fleet Corporation, was he not?

A. Admiral Harris was there for part of the time of the negotiations but when he left Mr. Piez stepped in to take the place.

Q. And it was probably the most tremendous business that had ever been gotten together, was it not?

A. Yes, I will agree with you it was a big business.

Q. And there were hundreds of shipbuilders probably in touch with Mr. Radford's department, as manager of the contract department, at that time, were there not, in connection with ship construction?

A. Yes, a lot of them.

Q. In testifying, in answer to Mr. Evans' question, that the various members of the Fleet corporation that you have mentioned, Mr. Piez, Admiral Bowles, Captain Radford, Mr. Ferris, Mr. Cox, were competent to check your estimates, it does not mean

that you submitted your chart and your explanation of the chart to them for checking?

A. It does not.

Q. You did not do that?

A. No.

Q. And without cost data, such as was used by you in connection with the preparation of this spot for Hull 253, the Fleet representatives had no way of determining at that time the probable cost to Bethlehem of building ships singlar to the ships upon which you were estimating, did they?

A. They had no cost but they had contracted for a great number of ships.

Q. But I say again, that, as I understand it, in the absence of such cost data as was used by you in connection with your estimate for a 9100 ton tanker, the officials of the Fleet Corporation had no way of determining the probable cost to Bethlehem of building such a ship, had they?

A. If they had no data available they could not estimate the cost, but if they had data available they certainly could.

Q. You never had furnished them with such data, had you?

A. I had not furnished them such data.

Q. And, in the absence of such data, they were consequently unable to determine the probable cost to Bethlehem of building such a ship as you have mentioned?

A. If they had data from other places they could estimate the cost to Bethlehem.

Q. Do you think it likely they had data such as you have testified to with respect to Hull 253 by which they could determine the cost to Bethlehem of building these ships?

A. They were not determining costs to anybody. They were determining what they considered to be a fair contract basis. Nobody could determine costs.

Q. And in the absence of such data as you say you used in connection with the preparation of this chart, as I understand it, it would have been impossible for the Fleet representatives to determine the probable cost to Bethlehem of building such ships?

A. I answered that in the absence of any data it would have been impossible for them.

Q. As a matter of fact, don't you know, and can't we get to the point on this, that under the circumstances as then existed you knew and everybody else engaged in this transaction knew that the only possible check the Fleet Corporation could make and had time to make, even if they had other available data, was a comparison of your prices with lump-sum prices submitted by other shipbuilders?

A. I don't know what information they had.

Q. Well, you don't know about any other information they had, do you?

A. No, I do not.

Q. You heard Mr. Radford testify that that is the only possible check they could make, and Mr. Piez testified to the same effect, did he not?

MR. EVANS: I object to that.

THE MASTER: We must draw a line somewhere. You cannot have through this witness all the testimony of the others.

BY MR. BROWN:

Q. Before we drop this point, what data do you think that the Fleet Corporation had in its possession from which it could have determined or should have determined the propriety of the estimates sub-

mitted by you as representing estimates of probable cost to Bethlehem of building the ships in controversy?

A. Why, I think they had data in their possession that had been supplied to them by practically all the shipbuilders of the costs of the ships that had been delivered at various periods. We supplied, when I was at the Fore River plant, the Bethlehem supplied to Admiral Bowles the cost of a lot of ships that had been completed, in addition to which he had the costs of ships when he was president of the Fore River plant. Now, if it went up 20 per cent. or 50 per cent., or 75 per cent., or a hundred per cent., or two hundred per cent., he had data on which he could form an opinion and his opinion would probably be far better than mine. He was a much more mature man and much abler man than I was.

Q. As I understand it you now say that according to your understanding the Fleet Corporation would have had data from which it could have determined just as readily as you determined the probable cost to Bethlehem of building a ship similar to Hull 253?

A. I wouldn't say just as readily.

Q. Well, in order to put Fleet officials on an equal footing, why didn't you tell them exactly why or how you arrived at your estimate with respect to the chart?

A. Well, why didn't they ask if they were interested in it?

Q. Why didn't you tell them?

A. It never dawned on me to submit it, never dawned on me to submit it to any man drawing a contract that I know of.

Q. In view of the fact that Admiral Bowles, in your opinion, was a very, very competent estimator,

didn't it occur to you when he turned to you and asked you your opinion as to the propriety of your estimate, and when he was apparently unable to submit any counter prices himself, that he was depending upon you and Mr. Powell for a statement of the probable cost to you of building the ships in controversy?

A. No. I should say it would be just the reverse.

Q. We have referred to the conference which I understand you testified took place sometime in March or April of 1929, attended by some of Bethlehem's counsel and Mr. Powell, at which the second chart, namely the chart which you constructed in Washington, was discussed; is that correct? Did you so testify?

A. Yes.

Q. And was that conference called in connection with the preparation of the trial of the case before Mr. Roberts?

A. Yes, sir.

Q. And you are sure Mr. Powell was there at that time?

A. That was the occasion of the conference.

Q. The occasion of the conference was because Mr. Powell was present, and it was, as I understand your last answer, for the primary purpose of preparing the case in connection with Mr. Powell's testimony; is that correct?

A. Yes, sir.

Q. Was the first chart which has been offered in evidence as Exhibit G-4 there presented before that conference or was a copy of it presented at that conference, or was it discussed at that conference? Did the conference relate solely to the second

chart or was there any reference made to this first chart?

A. There wasn't any conference especially in connection with the chart. It came up during the conference what had happened in Washington.

Q. Was there any discussion of the first chart at that conference?

A. I don't think so.

Q. Nothing said about it at all?

A. I believe not.

Q. Was there any other occasion when Mr. Powell was present in advance of the hearing before Mr. Roberts in which the first chart was discussed? Do you recall any other occasion?

A. No, I don't.

Q. But you are quite sure that the first chart was not mentioned at the conference to which we have referred which took place in March or April?

A. Well I feel quite sure that that was not mentioned.

Q. Is it likely that there would have been a reference to the first chart as the basis of the estimates at this conference in connection with the preparation for the trial before Mr. Roberts?

A. I don't see any reason why it should come up.

Q. Isn't it likely that there would have been some discussion as the basis of your estimates made in connection with the contract ships?

A. I doubt it.

Q. In talking about the personal relations between Admiral Bowles and Mr. Powell, as I gathered it, you did not mean to suggest, or did you mean to suggest that Admiral Bowles did not have confidence in Mr. Powell's integrity at the time of the negotiations relating to these contracts?

A. I hope you don't press that.

Q. Why, of course I will press it. Why else was it suggested by your counsel?

A. He did not have confidence in Mr. Powell's integrity.

Q. Of course we are talking about business matters, in connection with business matters. Your testimony refers to business matters?

A. Refers to business matters.

Q. And he had known Mr. Powell intimately for many years?

A. Yes, sir.

Q. The War Industry Board prices for materials were not increased during the period of the war or not after, during Government control of prices, were they?

A. Some of them were. Well, I will say they were not substantially increased.

Q. I am going to make a quotation from your testimony, which I know we all hope is the last. Your testimony before Mr. Roberts, starting at page 183 and referring to this error in the figures furnished to you by the Accounting Department with respect to material cost in connection with Hulls 158 and 159:

BY MR. BROWN:

"Q. Did you know that in applying your own factors just in the manner that you have explained that you did apply them in connection with hulls 158 and 159 that you had made a mistake in excess of $63,000 in favor of Bethlehem?

MR. EVANS: Will you read that question again?

(Question repeated.)

THE WITNESS: On what portion of the materials?

BY MR. BROWN:

Q. In excess of $63,000?

A. On what part of the materials?

Q. In other words, where was the mistake?

A. Yes.

Q. Well—

A. Was it in job 12 you are talking about, or in other materials?

(Discussion off the record between counsel.)

MR. EVANS: We do not understand, and the witness does not apparently understand what it refers to.

THE WITNESS: I don't understand just what it is, we took up job 12 first—

BY MR. BROWN:

Q. I show you a schedule which appears at page 578 of the Concession of documentary evidence which has been furnished by counsel for Bethlehem to counsel for the Government, and which gives the breakdown among other things of the costs with respect to hulls 158 and 159?

A. Yes, sir.

Q. And I ask you to take a pencil and paper and apply the method which you say you applied in preparation of this chart to these costs as shown in that schedule and tell me the result that you arrive at?

A. Well, I will have to take the breakdown of the job 12 before I can do it, because I cannot apply it just from this as it is here.

Q. The breakdown is given in your explanation?

A. Yes, if I can have it.

Q. I mean the information that you want, as I understand it?

A. Yes, the same factors are there.

(Witness used Exhibit G-154 as a basis of calculation.)

BY MR. BROWN:

Q. Let me put it this way, see if I simplify—

A. You are talking about, you are talking about the fifty-seven thousand dollars, are you?

Q. We are talking about an excess of over sixty-three thousand dollars.

A. Sixty-three, well, excess of fifty-seven, something, I can tell you right off how it is accounted for. When I received the information from the accounting department as to the cost of these ships, they had included in their accounts an item of thirty-three thousand dollars per ship, or sixty-six thousand dollars, to take care of probable cost that may come up at the guarantee period of the ships. Now, I didn't have the full accounts of these boats, and when I got from the accounting department the cost of these ships that was included therein, and when these figures were given to you they have been excluded.

Q. Well now, as I understand—

A. So that was taken as a material item which was increased 75 per cent.

Q. As I understand it, then, when you got the figures from your accounting department—

A. Yes, sir.

Q. —they included an item in excess of thirty-three thousand dollars which should not—

A. Yes.

Q. —properly have been included?

A. Yes, sir.

BY MR. WOOD:

Q. For each boat?

A. For each boat.

BY MR. BROWN:

Q. Which should not properly have been included?

A. Yes, sir.

Q. And that was made the basis of your estimate for this diagram?

A. Yes, sir.

BY MR. ROBERTS:

Q. Then I understand you to mean now that in that Exhibit G-6 that is not included, in the cost of those boats?

A. Correct.

Q. It was a contingent item on the books of the Fore River when the costs were given to you?

A. Yes.

Q. And included as actual costs and not contingent costs?

A. That is correct.

Q. That is, you thought it was actual costs?

A. I didn't know about it. They gave it to me as costs.

BY MR. BROWN:

Q. So that computation for the cost of hulls 158 and 159, applying your own factors, and your own methods, should have been in excess of $33,000 less than the price estimated by you as the cost of such ships?

A. Approximately so, yes."

You so testified, did you not?

A. Part of that don't sound right to me.

MR. BROWN: Will it be agreed this is a correct report of Mr. Brown's testimony covering that item or do we call the stenographer?

MR. EVANS: I am perfectly willing to agree that that is the transcript of the testimony and that it is accurate so far as I know. If you want to call Mr. Brown's attention to anything there go ahead and do it. I will admit the transcript is accurate.

BY MR. BROWN:

Q. In referring to the costs which you got from the Accounting Department, you are referring to costs which were given to you by the Accounting Department after your re-employment by Bethlehem in 1924, are you not?

MR. EVANS: Where do you get that? Will you point out anything in his testimony which substantiates your statement?

BY MR. BROWN:

Q. Having had your customary moment of reflection, will you please answer that question?

MR. EVANS: I think, if this testimony is to be used to contradict anything that the witness has said here, Mr. Brown should call his attention to the particular thing he says contradicts it.

MR. BROWN: It does not. I asked him when he got the data from the Accounting Department.

THE MASTER: When you speak of costs that he got from the Accounting Department,

are you referring to the costs that he got after he came back, which he checked?

BY MR. BROWN:

Q. This testimony that I have quoted refers to information from the Accounting Department as to the cost of these ships which were furnished you and which included this item which should not have been there. That is correct, is it not?

A. That is correct.

Q. And I say that that information, according to my information, was information which was furnished to you by your Accounting Department after your re-employment by Bethlehem in 1924, was it not?

A. Yes.

MR. EVANS: The incorrect information?

MR. BROWN: Just a moment. I am cross examining.

MR. EVANS: I want the witness to understand the question.

THE MASTER: That can be taken up afterwards.

MR. BROWN: His answer to that question was yes.

BY MR. BROWN:

Q. In furnishing that explanation to Government counsel in advance of the trial why was no reference made to that mistake?

A. Why I believe that I did not know of that mistake until the information was worked up as asked for by the Government.

Q. When did you first know of the mistake?

MR. EVANS: He is trying to tell you.

THE WITNESS: That is what I am trying to tell you.

MR. BROWN: Let him alone. This is important.

BY MR. BROWN:

Q. When did you first know of the mistake?

A. The first time I knew of the mistake was when the information was worked up or the Government asked for the cost of the ship. That is the first I knew that there was a mistake.

Q. Was that when the chart was first submitted to the Government?

A. What chart?

Q. Your chart or photostatic copy of your chart, when it was furnished to the Government in August of 1927; is that when you knew of this mistake?

A. I don't know.

Q. You think it was before that time or afterwards? May I refresh your recollection? The Government requested information as to cost data used by you as the basis for your estimates in January, 1927. Now with that date in mind can you tell us when you first realized this mistake that we are discussing?

A. I first realized the mistake, and you can check it up, when the sheets were prepared that gave you the final cost of the vessels divided by material I think and labor and expense and A. S. & G.

Q. That was furnished to the Government in August, 1927?

A. Well, then it must have been some little time prior to that.

Q. When you first realized the mistake?

A. That I first knew about it.

Q. And from that time to May, 1929, as far as you know, was any reference to this mistake ever made by you to Bethlehem's counsel? Did you ever notify Bethlehem's counsel of this mistake after your discovery of it some time about August 1927, and prior to the hearing before Mr. Roberts in June, 1929?

A. I talked to Mr. Robison about it, yes.

Q. You told him all about that mistake?

A. Yes.

MR. BROWN: I think it is a fair statement that I might make a record that there was absolutely no mention of the mistake to Government counsel prior to the testimony that I have quoted from Mr. Brown's testimony given, before Mr. Roberts at the prior hearing in this case.

"By Mr. Brown:

Q. That spot on your original chart on the 14,950 ton line, designates with the letters S. P. was intended to represent the price of $2,736,000., was it not?

A. Yes, sir.

Q. And in making up your explanation, referred to as Exhibit G-154, it is a fact, is it not, that in order to arrive at a price of $2,736,000. as your estimate of the cost of the ship, it was necessary for you to make a mathematical error in the amount of $10,000., was it not?

A. Yes, sir.

Q. Will you explain to us, in view of the fact that such a mathematical error was made by you in connection with your explanation or the preparation of the explanation known as

Exhibit G-154, which mistake was necessary in order to make your estimate coincide with that spot, that it appears that that spot likewise hits what you say was your original estimate for the tanker? In other words, did you make the same mathematical mistake, do you think, in the original estimate for this spot that you afterwards made in connection with the estimation known as Exhibit G-154? Do you think it likely that you made such a mistake?

A. I didn't make any mistake in the figures that I used.

Q. At what time, in connection with your explanation?

A. At either time.

Q. Well, in connection with your explanation you made a mathematical mistake of $10,000. as you have just testified?

A. Well, my dear man, if you ever used a slide rule you will think it is silly even to talk about that.

Q. Referring to your Exhibit G-154, in paragraph two of that Exhibit, in reaching your estimate of $2,736,000. for the tankers of 14,950 dead weight tons, you state that the equation factors used by you in connection with Hull 253 were applied to the following reported items of cost: $257,000. for materials on Job 12; $328,000. for other materials, and $451,000. for labor cost; and I ask you now to take your pencil and paper, which I will give you, if you think it necessary, and apply the factors which you used in connection with Hull 253 to those costs and tell me whether in reaching the figure of $2,736,000., you have not made a mathemat-

ical mistake in the amount of $10,000., and whether your total should not have been $2,746,000.?

A. Probably is. I will admit the mistake.

Q. And do you think it likely in connection with the original preparation of this chart, when you arrived at a spot and plotted a spot exactly on the line representing the cost of $2,736,000. instead of $2,746,000, that you made exactly the same mistake that you made some six years later in connection with your preparation of the present explanation? Is that correct?

A. Yes."

MR. BROWN: I offer in evidence contracts 158 and 159 produced by Bethlehem on request and ask that they be marked Exhibits G-205 and G-206.

(Admitted without objection and marked Exhibits G-205 and 206.)

Recross Examination

BY MR. EVANS:

Q. In order to arrive at the approximate cost of a 14,950 ton tanker, as I understand it, you had to do a good deal of multiplying, did you not?

A. Yes, sir.

Q. Well, your job was to multiply 267,000 by a factor of increase of 2.66. That was one job, wasn't it?

A. Yes.

Q. And your next job was to multiply 328,000 by a factor of 1.75?

A. Yes, sir.

Q. And your last job was to multiply 451,000 by a factor of 1.68?

A. Yes, sir.

Q. Now how did you do that, by longhand mathematics or did you use one of these iniquitous slide rules?

A. Used a slide rule.

Q. And is an error of $10,000. in dealing with figures of that size a common error to make?

A. It was as close as you would expect to get.

Q. Were you using whole figures or were you carrying out to decimals?

A. You couldn't carry it out to decimals.

Q. But if you were multiplying by decimals you would have to carry it out to decimals, wouldn't you, if you were using longhand?

A. Yes.

Q. Mr. Brown asked you if you did not make up these estimates with the idea they were going to be used for lump-sum contracts. At the time you made these estimates did you know Mr. Powell's feeling about taking a lump-sum contract?

(Objected to.)

Q. Had you taken part in any discussion with Mr. Powell regarding lump-sum contracts, not for these boats but generally, whether he would take lump-sum contracts on anything?

A. Yes, I discussed with Mr. Powell the type of contract on which we would operate.

Q. You had discussed that in connection with the Navy Destroyer contracts, hadn't you?

A. Yes.

Q. Which had been closed although not executed some time before?

A. That is right.

Q. And you knew perfectly well Powell had said he was not going to take any lump-sum contracts on new construction, didn't you?

A. Yes, sir.

Q. And you had that in mind when you made up these estimates of cost?

A. Yes.

BY MR. BROWN:

Q. And I suppose that is why Mr. Powell offered lump-sum prices on the Union stock ships and also on additional Sparrows Point stock ship as late as December 14th and December 20th, 1917, on a lump-sum basis, because he had told you considerable time prior that under no circumstances would he take work, new work, on a lump-sum basis?

A. Yes.

MR. EVANS: Did you hear that question? Well, never mind.

(Adjourned to 10 o'clock A. M., April 2, 1931.)

HARRY BROWN recalled.

BY MR. BROWN:

Q. I would like to ask Mr. Brown if he did not testify as follows at page 133 of the previous proceeding, in answer to the following question by Mr. Wood: "Who was Admiral Bowles? A. Head of the Construction Division of the Shipping Board, the man with whom we did our business." You did

so testify, did you not?

A. Yes, sir.

Q. That is correct, is it not?

A. Yes, sir.

MR. BROWN: I offer in evidence copy of a letter dated June 30, 1928, addressed to Ralph B. Evans, Esq., by W. W. Robison, under the letterhead of Cravath, De Gersdorff, Swaine and Wood, a copy of which was furnished to counsel for the Government by Mr. Evans.

Copy of letter admitted in evidence and marked G-207.

JOSEPH A. HONSICK, having been duly sworn, was examined and testified as follows:

BY THE MASTER:

Q. Your full name and address, please?

A. Joseph A. Honsick; No. 9 East Underwood Street, Chevy Chase, Md.

BY MR. HALLETT:

Q. What is your business and what do you do at the present time?

A. I am an auditor for the United States Shipping Board and Merchant Fleet Corporation.

Q. How long have you been with the Fleet Corporation?

A. About eleven years.

Q. Have you been assigned, or were you assigned, to do work in connection with the Bethlehem accounts?

A. I was.

Q. When?

A. Along about June 8, 1920.

Q. And on what work were you assigned?

A. I was assigned to audit the operating expense at the five Shipyard plants; also the Administrative, General and Selling Expense at the home office at Bethlehem, Pennsylvania; and also to audit the Depreciation and Plant Accounts at all the Shipyard plants and the home office.

Q. Were you in charge of the audit which you have just outlined?

A. I was in charge of the field forces at that time, yes, sir.

Q. And you had a number of men under you?

A. Yes, I had quite a large crew.

Q. When did you say you started in with that audit?

A. About June 8, 1920.

Q. In making these audits were you in touch with the Bethlehem representatives at the different plants and at the home office?

A. Oh, yes, I came in contact with the Bethlehem representatives at all the plants, at the home office, and frequently at the Fleet Corporation district offices.

Q. With which representatives of Bethlehem did you come in contact in settling the problems that arose?

A. I came in contact at the home office with Mr. Hauck; Mr. Stewart—

Q. Mr. Hauck; who was he?

A. Mr. Hauck, I think, was Assistant Controller.

Q. Who else?

A. Mr. R. H. Transue at the home office, who I think was assistant to Mr. Hauck. I came in contact at the Fore River plant with Mr. Derr.

Q. Who was he?

A. He was the Works Accountant. Mr. Brecht; he was Assistant Works Accountant. Also came in contact with Mr. John J. Ford. I think he was assistant to Mr. W. L. Lewis, who was one of the assistant controllers at the home office.

Q. Was there any one man of Bethlehem who was in charge, or appeared to be in charge, of the conduct of the settlement of these problems for Bethlehem?

A. In the early part of the audit I made quite a number of settlements concerning overhead with Mr. Ford. Later on, in the latter part of 1921 and the early part of 1922, Mr. H. G. Smith seemed to have charge of settling matters that were in dispute at the time.

Q. That is Mr. H. G. Smith who is here now?

A. Yes, sir.

Q. Did you know at that time what his position was?

A. I think he was General Manager, or Vice-President and General Manager, or some such title. I am not quite sure which it was.

Q. Did you have any relations with Mr. Geiss?

A. Yes, Mr. Geiss very frequently accompanied Mr. Smith during the settlement of these items, and sometimes I came in contact with Mr. Geiss when he was not with Mr. Smith.

Q. Mr. Geiss is here?

A. Yes, sir.

Q. What was his position at that time?

A. I do not know what his official designation was, but I understood he was attached to the Controller's Department.

Q. During the year 1921 were you present at any conferences at which Bethlehem representatives

were present, Mr. Smith and Mr. Geiss, in which the subject of wage reimbursement came up?

A. Yes, there were a number of wage conferences in 1921 that came up, in which Mr. Smith and Mr. Geiss were present.

Q. What was the controversy with respect to wage reimbursement?

A. The one big controversy that I recall very distinctly was the matter of what the base rates were for the contract ships at the various plants.

Q. Why was that important?

A. It was important in that the estimated price in the contracts was to be increased by the difference between the base rate and the current rate existing during the production of the ships.

Q. In other words, the base prices named in the contract were to be increased by the amount of the cost of labor over and above the rates at which those base prices had been fixed; is that what you mean?

A. That is right.

Q. Was the subject taken up at those conferences as to what the actual base rate had been at which these base prices had been fixed?

A. Well, yes, that is what the big job was, was to try to determine what the base rate was for the various contracts at the various plants.

Q. What do you mean by the base rate at the plants? Do you mean the base rate that was actually used in determining those base prices was what you were trying to determine?

A. That is what we were trying to determine.

Q. In connection with the contracts and the terms of the contracts, as I recollect it, the term in the contract was to the effect that any increase over

the rates in force and effect on January 3rd, 1918, as a result of the orders of some board which was named there—any increase over those rates would be added to the base cost; is that right?

A. That is right.

Q. And you had the problem of determining, first, what rate was meant by that contract designated as of January 3, 1918, named by that board?

A. That is correct.

Q. Was there a dispute as to what the terms of that contract meant in that definition of that rate?

A. There seemed to be some dispute about that.

Q. And were the parties attempting to determine what had been meant by that particular phrase used in those contracts?

A. Yes, they had.

Q. And in determining the interpretation of that phrase, was it material to find out what actual rate had been used in arriving at these prices?

A. Yes; we tried to find out what the actual rate was that was used in the estimates that were made.

Q. And in attempting to find out the actual rates that were used by Bethlehem, were any requests made by Bethlehem representatives to furnish you figures and facts concerning the estimates?

A. My recollection is that any number of times we asked for the estimates supporting the prices set out in the contracts, particularly in connection with the labor element.

Q. Can you remember any occasion on which these requests were made particularly?

A. Well, I remember a number of requests that were, two of them particularly, one in August of 1922 and another one in October, 1922.

Q. Where were these conferences held?

A. The August conference was held in the board room at the office of the Shipping Board and the second conference that I mentioned, in October, was held on the first floor of the Shipping Board.

Q. Who was present at the August conference; do you remember?

A. For Bethlehem I think it was Mr. Smith and Mr. Geiss. I believe Mr. White was there and Mr. Leonard. Then I think Mr. Berkely, or some such name; and for the Shipping Board Mr. Bullitt, Mr. Lisson, generally Mr. Pitts—

BY MR. EVANS:

Q. What do you mean, "generally Mr. Pitts"?

A. Wait a minute, this is a specific conference, Mr. Aron, Harold G. Aron, was present, and myself.

BY MR. HALLETT:

Q. Is that all you can remember being present at that time?

A. Offhand, that is about all I can remember.

Q. What took place at that conference? What was said, as far as you can remember, with respect to the subject we have been talking about?

A. Well, the matter of base rates was always a good subject to talk about and there was always a considerable discussion about it. It came up very frequently, and on account of the low base rate that Bethlehem was contending for, it did not seem to us that that could be the proper base rate and we always had it in our minds, at least those I talked to on our side—

MR. EVANS: I do not think we are concerned with what you had in your mind. Just tell us what was said at this conference.

THE WITNESS: As I say, it was contended at the conference that Bethlehem's base rates, that is, the base rates used for the contracts, were much higher than the contention made by Bethlehem, and Bethlehem were asked at that conference if they could produce the estimates, and, as I recall, the answer to that request was that they did not have any, that they were made on the backs of envelopes.

BY MR. HALLETT:

Q. Who made that statement, do you remember?

A. My recollection is that Mr. Geiss made the statement at the time.

Q. Was Mr. Smith there at that time?

A. Mr. Smith was there.

Q. Were there any comments made by any of the Bethlehem people after that remark?

A. No, because we had heard prior to that—

MR. EVANS: I object to what you had heard. Just confine yourself to the conversation you had at the conference.

THE WITNESS: All right, no.

BY MR. HALLETT:

Q. Had you been told prior to that that there were no estimates?

MR. EVANS: By whom?

MR. HALLETT: By representatives of Bethlehem.

BY MR. HALLETT:

Q. Had you been told that?

A. Yes, we had been informed that there were no estimates.

Q. By whom had you been informed, if you recollect?

A. Exactly who told us I could not say, but during these labor conferences, when the subject of base rates came up, we asked on more than one occasion if we could see the estimates, and somebody on the Bethlehem side replied that "we did not have any estimates."

Q. Did you ever see any estimates?

A. The only estimates that I saw were for Contract 465.

Q. Were those for the troop ships?

A. Yes, sir.

Q. And these statements that you speak about were made in conferences which were being held by you with Bethlehem representatives for the purpose of trying to arrive at a settlement of the problem?

MR. EVANS: What problem?

MR. HALLETT: Of the wage problem.

A. Yes, sir.

BY MR. HALLETT:

Q. What was the second occasion that you remember particularly, in October?

A. That was the October conference held downstairs.

Q. Downstairs where?

A. At the offices of the Shipping Board.

Q. In Washington?

A. Washington, D. C., and there seemed to be—

MR. WOOD: Not "there seemed to be." Let us have what was said and what was done, and not what seemed.

BY MR. HALLETT:

Q. Who was present, first; do you recollect?

A. At those conferences I think again Mr. Smith was present from Bethlehem and Mr. Geiss, and for the Shipping Board Mr. Bullitt, Mr. Adamson, Mr. Lisson and myself. There were a number of others on both sides, but I cannot recall their names at this time.

Q. What took place at that time?

A. Again came up the question as to what the base rate was for the contract ships, and Mr. Adamson asked to have the estimates for the contract ships produced and Mr. H. G. Smith, for Bethlehem, answered that they did not have estimates in detail and no estimates were produced as a result of that request.

Q. As I understand it, you never were given any estimates from Bethlehem of the base costs of these ships?

A. No, we were not.

THE MA 'TER: Does your question relate solely to the labor item, or does it relate to the other items? So far as I understand the witness the investigation he was engaged upon simply entered into labor items.

MR. HALLETT: That is where it came up particularly, as the occasion for the demand.

THE MASTER: Your question is rather general, and if you mean it to be general, all right.

MR. HALLETT: I mean it so.

BY MR. HALLETT:

Q. Did you ever receive any estimates of the labor costs that entered into the base prices?

A. None except on 465.

Q. And, as I understand it, you were continually asking for those estimates and that evidence, and were told that they did not have it in detail, or did not have it?

MR. EVANS: I object to that question. The witness has told what was done.

BY MR. HALLETT:

Q. In spite of what you were told, you continued to make those requests?

MR. EVANS: I object. Let him state what was done.

BY MR. HALLETT:

Q. Why did you make these requests, in the light of what you had been told?

A. Well, we made those requests because it was our firm conviction that the base rate was much higher—that is, the base rate used to estimate the contract prices, was much higher than Bethlehem represented it to be when we were arriving at the base rates at the various plants, and for that reason we kept constantly asking for estimates.

BY MR. BROWN:

Q. Having been told once that there were no such estimates, why did you again ask for such estimates?

A. I did not think that where millions of dollars, I don't know, about one hundred fifty or one hundred seventy-five millions of dollars of contracts would be let, that there would be no estimates made, at least in such form as where we could get the labor.

Q. Was any data with respect to the basis of the estimates submitted by Bethlehem ever fur-

nished to you, with the exception of the data relating to Contract 465?

A. Will you repeat that question?

(Question read.)

Q. Were any working papers or cost data ever submitted to you showing the basis for the estimates originally submitted by Bethlehem in connection with these ships in controversy?

A. None that I know of.

Cross Examination

BY MR. EVANS:

Q. You mentioned a Mr. Bullitt as being present at the two conferences about which you have particularly related, one in August and the other in October of 1922. I wish you would tell us who Mr. Bullitt was?

A. Mr. Bullitt was an attorney.

Q. Can you tell us his full name?

A. William Marshall Bullitt.

Q. Yes, and he was an attorney?

A. Correct.

Q. And was he present at those conferences in his capacity as attorney?

A. I do not think so. I think he was—

Q. What was the occasion for his being there?

A. To discuss the Bethlehem problems.

Q. Did he represent Bethlehem?

A. No.

Q. Did he represent the Fleet Corporation?

A. I will tell you, I really do not know exactly how Mr. Bullitt operated.

Q. Let us see if you do not know, Mr. Honsick.

Don't you know that this whole matter was referred by the Fleet Corporation to Mr. Bullitt for his decision?

A. He made some decision. I did not know exactly, though, how he was employed.

Q. You knew that he was counsel for the Fleet Corporation at that time, did you not?

A. He was counsel for the Fleet Corporation, that is correct.

Q. And you knew that the Fleet Corporation had referred this matter for his decision, or at least for his recommendation?

MR. BROWN: Wait a minute. What matter?

MR. EVANS: The matter of the settlement of the claim of Bethlehem against the Fleet Corporation on the requisition and contract ships.

BY MR. EVANS:

Q. You knew that, did you not?

A. I was not there when he was employed or when he was assigned to the task, but from the hearings that took place at the time I presume that is what he was there for.

Q. Yes, and you have since heard that that was a fact, have you not? You have been told?

A. He made a final report, correct?

Q. Yes, and these hearings to which you have referred were hearings before him for the purpose of enabling him to determine the facts and make an intelligent report; is not that correct?

A. Yes.

Q. You mentioned a Mr. Lisson; will you tell us who he was?

A. Mr. Lisson was an auditor for the Fleet Corporation. He was my superior during part of the time.

Q. And was he assisting Mr. Bullitt in this investigation that Mr. Bullitt was making?

A. He performed dual duties. He acted as representative of the Controller, of the Controller's Department and of the Controller, and he did assist Mr. Bullitt in Mr. Bullitt's getting out his report, furnishing him with papers and so forth.

Q. How long did your audit require?

A. You mean that audit on which I was particularly assigned, or which audit? There were several going on at the same time.

Q. Of Bethlehem?

A. Yes.

Q. Several audits of Bethlehem in connection with the requisition and contract ships?

A. No, that is not what I mean.

Q. What do you mean?

A. I mean that there was a current audit going on during part of the time, that there was a wage increase audit which was handled by a separate crew, and that there was an audit of the overhead or operating expense, administrative and general and depreciation going on at the same time. Now which audit do you have reference to?

Q. By different crews of auditors?

A. Yes.

Q. All there representing the Fleet Corporation?

A. Yes.

Q. With which particular audit were you concerned?

A. In the beginning I was concerned primarily with the audit of the Overhead, the Administrative

and General Expense and Depreciation, but in the latter part of 1921 and the first half of 1922 I came in contact with the wage matters and some material matters.

Q. When did you begin your work, your auditing work of Bethlehem?

A. About June 8, 1920.

Q. And when did you finish?

A. Along about July, 1922.

Q. And was that the time that the audit was completed, and when I refer to audit I mean to use that term to include what you have referred to as three separate audits?

A. Yes.

Q. And during the period that you and other auditors were auditing Bethlehem's accounts, you had full access to their accounting records, did you not?

A. I had access to most of the records, but not all their records.

Q. Were there any records that you were not allowed to have access to?

A. Yes.

Q. What?

A. I asked for the bonuses, a list of all the bonuses that were paid at the home office. I never got that.

Q. We were not charging you with any bonuses, were we?

A. There were bonuses charged up on the expenses of the corporation.

Q. But did that appear in any claim that we were making against the Fleet Corporation?

A. They asked us to absorb a part of the Ad-

ministrative, General and Selling expense, and they were a part.

Q. Oh, you thought they were a part of the A. S. and G?

A. I did not think so; they were there.

Q. They were there?

A. Yes, sir.

Q. How did you know they were there?

A. I examined the books.

Q. Oh, you examined the books, but they would not let you see them?

A. I examined the books, but I did not get a list of the bonuses. They were not listed in the books.

Q. How did you know that the bonuses were in the A. S. and G., then?

A. There was a total for bonuses.

Q. Oh, the total?

A. The total, yes, sir.

Q. What other books did you ask to see and were not permitted to see?

A. I asked for some records at Fore River.

Q. What records?

A. In connection with some expenditures that Mr. Wakeman up there made.

Q. Who is Mr. Wakeman?

A. I think he was the plant manager.

Q. Yes?

A. I also asked Mr. Bankhart, who was the Works Accountant at the Harlan plant, for some records that were withheld for a considerable period before we got them. I also asked for records at the Moore plant that were not made available, in connection with the marine auxiliaries.

Q. But there were no records regarding pay-

ments for labor that you asked for and were not permitted to see, were there?

A. You say the payment of labor?

Q. Well, payrolls, I will call it that. That, I suppose, would be the record of the payment of labor, would it not, payrolls?

A. Payrolls at the plants were, as I recall, always available, yes, sir.

Q. There had been an audit made previous to the audit in which you participated, had there not?

A. There was a current audit made prior to my coming there, yes.

Q. And by current audit you mean that during the period of construction, both on requisition vessels and on contract vessels, Bethlehem's accounts were currently audited by Fleet Corporation auditors?

A. Your question is a little broad there.

Q. Then give me the answer. You tell me what the fact is.

A. Because in connection with some of the requisition ships, particularly those that were on the lump sum basis, we did very little auditing, if any, except perhaps for Changes and Extras.

Q. With that exception there was a current audit made, or with that explanation there was a current audit made?

A. Yes, sir.

Q. So that the audit in which you participated was really a reaudit, was it not?

A. Substantially, yes.

Q. After you had completed your audit and you had had these various conferences before Mr. Bullitt, the matter was referred to him by the Fleet Corporation for his recommendation and decision, was it not?

A. Well, I presume it was.

Q. Don't you know that it was?

A. I was not there when the case was assigned to Mr. Bullitt and did not hear what he was told or what instructions he got.

Q. Are you with the Fleet Corporation now?

A. Yes, sir.

Q. Have you been with them continuously since 1921?

A. I have been with them since the latter part of 1919.

Q. You have been with them continuously?

A. Yes, sir.

Q. Don't you know that on March 3, 1923, Mr. Bullitt did submit his opinion to the Shipping Board?

A. Yes, sir.

Q. Have you ever seen the report?

A. Yes, sir.

Q. Then you did know that he made a report?

A. Oh, I knew he made a report. I do not deny it.

Q. I show you what I am informed is a copy of that report and I will ask you whether you can tell us whether it is or is not a copy of Mr. Bullitt's report which he made to the Shipping Board?

A. I will tell you, I do not recognize it in this form because I never saw it in this form.

Q. Have you got a copy of the report which you can produce?

A. I believe I have a printed copy in my office.

Q. Can you get it and produce it, unless counsel are willing to agree, subject to verification, that this is a correct copy which I have here?

MR. BROWN: I want first to know what Mr. Evans is going to do and whether he wants

to introduce the entire record of the Bullitt proceeding. If he does, and if the Master thinks it might aid him in the decision of this case, we will not object.

MR. EVANS: That is what I am going to do. My present question is whether for that purpose we might use this report.

MR. BROWN: I think that I can get a copy of the record of the Bullitt proceeding which both sides will agree upon as being authentic, and it can be offered when that is gotten, if it is admissible and if the Master decides to have it.

THE MASTER: As I understand, at the moment Mr. Evans is using the copy which he says is a copy of the Bullitt Report.

MR. EVANS: Yes.

THE MASTER: Not of the entire proceeding.

MR. BROWN: Let us assume it is for the present.

THE MASTER: And for the purposes of this examination I understand Government's counsel will concede that that is a correct copy, subject to verification hereafter.

MR. BROWN: That is all right.

MR. EVANS: That being so, Mr. Honsick, I do not think you need concern yourself about the thing. I will ask that that be marked for identification.

MR. BROWN: Is that a record of the entire proceeding?

MR. EVANS: No, just the report.

THE MASTER: For the purpose of identification, the document offered is the opinion of William Marshall Bullitt on disputed claims between Bethlehem Shipbuilding Corporation, Ltd., and United States Shipping Board Emergency Fleet Corporation, dated March 3, 1923. I will mark that now for purposes of identification as B-100.

BY MR. EVANS:

Q. Mr. Honsick, you have been about shipyards a good bit, I suppose. The expression that an estimate was made on the back of an envelope is quite a common expression among shipbuilders, is it not?

A. I never heard it before.

Q. You never heard it before?

A. No, sir.

Q. You did not know that among shipbuilders that had a more or less technical meaning, which is that it was an estimate that was not made up in detail, as estimates ordinarily are made up in normal times?

A. No, I never heard that.

Q. If it had that significance, you did not so understand it when Mr. Geiss told you that Bethlehem's estimates on these contract ships were made up on the back of an envelope?

A. I did not know exactly what he meant by it, other than that there were no estimates.

Q. You did not take it literally; did you, that they had been made on the back of an envelope?

A. I did not think that he exactly tore off the front end of an envelope and wrote it on the back of that. He might have used a yellow piece of paper, like you have in front of you.

Q. I was wondering whether you wanted the Master to understand that you and the other representatives of the Fleet Corporation took that statement of Geiss to mean literally what it said?

A. Not exactly that way, Mr. Evans.

Q. What you were trying to do was to find out what the base rate, that is, the base wage schedule, was in the various Bethlehem Yards on January 3, 1918, were you not?

A. Well, that is one of the things that we were trying to find out.

Q. That is the only thing that you needed to start with in order to arrive at the amount of increase in the wage schedule which occurred subsequent to January 3, 1918, by reason of the various wage increases that were ordered to be put in effect by the Labor Boards; is not that right?

A. As I recall, we needed the Navy Yard scale. We also had to have payrolls to see how that Navy Yard scale was applied, and there was other data that was necessary in connection with it in order to determine the base rate.

Q. Well, now, let us see. The East Coast contracts, which included, of course, all boats built at Fore River, at Sparrows Point, at Harlan and at Moore, all contained this provision, did they not, that the estimated cost is based upon the wage scale as adopted by the Federal Adjustment Wage Board and in force on January 3, 1918, at the Navy Yard of the United States at Boston in the case of Fore River, Brooklyn in the case of Moore, Norfolk in the case of Sparrows Point, and Philadelphia in the case of Harlan; is not that correct?

A. That is my recollection of the wage clause.

Q. And what you were trying to ascertain was

what was the wage schedule as adopted by the Federal Adjustment Wage Board and in force on January 3, 1918, at those various Navy Yards; is not that correct?

A. We could get the wage scale. What we wanted was the average rate from which to begin to determine what the increase was.

BY MR. BROWN:

Q. To be added to the base price in the contracts on account of labor?

A. Correct.

BY MR. EVANS:

Q. What do you mean, what the average rate was?

A. Well, take a wage scale. A wage scale has many rates in it, running in variations for different crafts. Particularly in the Navy Yard scales that were in effect at that time there were three rates, practically, for every craft. What we were interested in finding was one rate for the plant, arising out of the application of that scale if it was applied.

Q. Was that a difficult matter to determine?

A. Very difficult.

Q. Why?

A. Because the work was so voluminous, because there was a disagreement between the crafts, what they meant on the Bethlehem payrolls and as they were on the wage scales. Bethlehem had crafts on their payrolls that were not mentioned in the Navy Yard scales. There were Navy Yard crafts that were not mentioned on the Bethlehem's payrolls, and there was a continual wrangle as to what the various scales, that is, the scale that Bethlehem was using, or rather the rates that they were using, were as compared with the Navy Yard scale.

Q. The Navy Yard wage scales were stated in terms of cents per hour, were they not?

A. My recollection is they are by day rates.

Q. Day rates; well, dollars per day?

A. Yes.

Q. And there was one wage schedule that applied to riveters, we will say?

A. Yes.

Q. And there was another wage scale that applied to—

A. Caulkers, chippers.

Q. Caulkers, chippers and so on all down the line?

A. Shavers and so on.

Q. And one of the problems was to determine whether a particular man at the Fore River plant, we will say, got a riveter's wage or whether he got a chipper's wage; is that right?

A. No, not necessarily.

Q. What was your problem?

A. For instance, one of the problems was this. The Navy Yard scale would figure out for a machinist, one class of machinist, 46 cents, and the next grade above that was 56 cents and the grade above that was 59. There were three rates, 13 cents apart, and 3 cents between the top and the next to the top. But when we examined the Bethlehem payrolls, as I recall, they did not pay those three rates. They paid below the Navy Yard scale in some cases. They paid in between. For instance, they might have 47, 48, 49, but there was no such rate in the Navy Yard scale. They had one or two men above, but very seldom did we find them above the Navy Yard scale. That was one of the problems.

Q. By the way, when was the first increase in

wage schedule on the East Coast after January 3, 1918?

A. I think there was an award in March that I think was revised in April, 1918.

Q. What you were concerned with, then, was the application of the Navy Yard wage schedule to the different Bethlehem Yards?

A. That is right.

Q. And it was a different problem at each Yard?

A. Correct, because they were different rates.

Q. You were not concerned with earning rates, were you, you were concerned with labor rates; is that right?

A. I had not heard anyone on the Bethlehem side ever mention an earning rate until some time after the audit was completed.

Q. I do not think that is an answer to my question, but you know the difference between a wage rate or a wage schedule and an earning rate, do you not?

A. What is the difference?

Q. Don't you know?

A. There may be some difference, but I do not know exactly what you mean.

Q. I am not asking you what I mean. That would be an impossible question. I am asking you whether there is any difference between a wage rate and an earning rate?

A. There could be a difference.

Q. Is there not a well recognized difference?

A. Are you asking me?

Q. Yes.

A. Is there a well recognized difference?

Q. Yes.

A. It might be at some plants.

Q. You have evidently got something in your mind. Tell us what you think the difference is between a wage rate and an earning rate?

A. A wage rate is a rate, as I would take it, an hourly rate fixed for a particular job or craft, or a rate picked out of a scale. That would be the wage rate.

Q. That would be the wage rate?

A. Yes.

Q. What is the difference between that and the earning rate?

MR. HALLETT: You mean the plant earning rate or an individual earning rate?

MR. EVANS: I don't care, he can answer anything he pleases.

A. I do not know exactly what you mean by an earning rate.

Q. I am not asking you what I mean.

MR. BROWN: Explain why that is. Let us make progress, Mr. Honsick.

THE WITNESS: If he means an earning rate perhaps by merely taking a payroll, as is frequently done, that is, the wage roll of a plant in dollars and cents, and dividing it by all the hours worked by all of the men, that might be an earning rate. You might call it that.

BY MR. EVANS:

Q. Would that be the same thing as the wage rate?

A. The wage rate, you may be paying man rates per hour. You may be paying two dozen.

Q. Would it be the same thing as the average wage rate?

A. That might not be so. It might not be the same as the average wage rate resulting from the application of the scale.

Q. You testified in this proceeding before Mr. Roberts too, did you not?

A. I did.

Q. But you did not tell us anything about this audit that you made, or this request that you had made to various representatives of Bethlehem for their estimates at that time, did you?

A. I do not believe anybody asked me.

Q. I do not think that anybody asked you either, Mr. Honsick, but the fact is that you were neither asked nor did you volunteer the evidence, did you?

A. If I was to sit down here—

MR. BROWN: We will concede that fact.

BY MR. EVANS:

Q. That is a fact, is it not?

A. That is a fact.

Q. At the last hearing you produced an exhibit, which was offered in evidence by the Government and it is marked G-46, a copy of which I hand you. Am I right?

A. That is the exhibit I made up.

Q. The purpose of making that up was to show the relation between the actual cost of the contract ships that Bethlehem built and the estimated or base cost stated in the contract?

MR. BROWN: We object to this unless it relates to the matter of the direct examination.

THE MASTER: I presume you will agree that it is a valid objection?

MR. EVANS: I presume it is.

MR. BROWN: You can call him as your own witness.

THE MASTER: I will sustain the objection.

MR. EVANS: I would like this marked for identification. It may take the same number that it took before, G-46.

Redirect Examination

BY MR. BROWN:

Q. As I understand it, in connection with the settlement of the Bethlehem claims arising out of the contracts in controversy, a controversy arose as to the amount to be added to the base price named in the respective contracts as including increased labor cost, is that correct?

A. Yes, sir.

Q. And in connection with that controversy, as I understand it, Bethlehem, through its representatives, took the position that one rate had been used in connection with their original estimates for these ships in controversy, and the Fleet Corporation contended that a different rate had been used; is that correct?

MR. EVANS: That is objected to. That is certainly not redirect examination.

MR. BROWN: It is absolutely on this subject and is merely an attempt to summarize what he has said.

THE MASTER: I think so far as it is relevant, whether it is redirect or not, he is still the

Government's witness and he can go ahead and elaborate on his previous testimony.

MR. EVANS: Then I object to the testimony on the ground that it is leading.

MR. BROWN: This is rebuttal, and I have a right, in summarizing the testimony of the witness, to offer leading questions. I am merely trying to bring it out of the confusion it has gotten into.

MR. WOOD: That is not a summary of anything he ever said.

MR. BROWN: As far as the testimony of this witness is concerned, it was intended to be confined to a very simple issue and I am trying to bring his testimony back to that issue. I am merely summarizing what has been said, which is directed to the only issue with which the Government is concerned.

BY MR. BROWN:

Q. I would like to know, with respect to this controversy as to base rates applicable to these contracts in controversy, if it is not a fact, as you have already testified, that Bethlehem took the position that one base rate was applicable and the Fleet contested that position and took the position that another base rate was applicable?

MR. EVANS: That is objected to as being leading.

THE MASTER: We will sustain the objection to it as leading, but I think if counsel chooses to put it in as a summary and Mr. Evans desires to object to it and put his own summary in, we will take the summary of

counsel rather than to go through all this thing again.

MR. EVANS: That is true, but it seems to me a summary should take the form of argument and not testimony.

THE MASTER: I agree to that.

MR. EVANS: It is a new rule of practice that counsel can cross examine his own witness simply to clarify his testimony.

THE MASTER: Quite correct.

BY MR. BROWN:

Q. As I understand you have just stated, there was a controversy as to the base rates applicable in determining the amount of increased cost to be added to the respective base contract prices named in the contracts in controversy; is that correct?

A. Yes.

Q. And there was a difference of opinion between the Bethlehem representatives the Fleet Corporation representatives as to the correct base rate for use in determining that controverted question, was there not?

A. Yes, sir.

Q. The Bethlehem representatives took the position that a certain base rate was applicable with respect to the respective contracts for the purpose of determining the amount of increased labor cost to be added to the respective base prices named in the contracts, did they not?

A. Yes, sir.

Q. And that position was controverted by the Fleet representatives, who contended that a different base rate was applicable to the contracts in controversy, for the purpose of determining the amount of

this increased labor expense to be added to the base prices named in the contracts; is that correct?

A. Yes, sir.

Q. As I understand it, in the conferences in 1922 which were attended by Mr. Smith and Mr. Geiss, this question as to the disputed base rate applicable to the contracts in controversy, for the purpose of determining this increased labor cost to be added to the base price, was again raised; is that correct?

A. It was.

Q. And, as I understand it, the Fleet representatives at that time had conferences attended by Mr. Smith and Mr. Geiss, who have been present throughout these hearings and who are still present, requests were made by the Fleet representatives upon the Bethlehem representatives for the estimates which had been used in preparing their original estimates submitted in connection with these contracts, in order to determine the exact base rates which had been used in connection with such estimates, in order in turn to determine this controverted issue as to the base rates applicable to these contracts; is that correct?

A. Yes, sir.

Q. In answer to those requests of the Fleet Corporation for the estimates which were actually used by Bethlehem in connection with its proposals for these ships in controversy, you were informed, as I understand it, in effect, that there were no such estimates; is that correct?

A. Yes, sir—except as to 465.

Q. Except as to 465, and that statement, in so far as you can remember, was made by Mr. Geiss, in Mr. Smith's presence?

A. Yes, sir.

Q. And there was no denial of that statement by Mr. Smith or any other representative of Bethlehem; is that correct?

A. No, there was not.

Q. And no such data or working papers were ever furnished to you in pursuance of those requests made by the Fleet representatives?

A. None that I know of.

Q. When I say to you, I mean to anyone in the Fleet Corporation, so far as you know?

A. No, sir.

BY THE MASTER:

Q. When you were sent to the Bethlehem to ascertain the amount representing the base for the item of labor in this estimate, as you have stated, were you simply given a roving commission by the representatives of the Fleet Corporation, or were you given any data that they had as a base to check against?

A. I was not sent to Bethlehem to determine the base rate. To explain my connection with reference to those base rates—

Q. What I want to know is, what were you trying to get? As a result of this audit, what was it you were trying to get, that you personally had supervision of?

A. You mean at Bethlehem?

Q. In relation to the contract ships, yes.

MR. ROBISON: I think the witness thinks you mean Bethlehem, Pennsylvania, alone.

THE MASTER: No, he understands what I mean.

THE WITNESS: No, I know what he means all right. In connection with the increased wage

problem we asked for the payrolls when we got to the plants and we got those payrolls. We asked for the Navy Yard scales; in one or two cases I believe they were furnished. We made comparisons between the Navy Yard payrolls and the Bethlehem—I mean the Navy Yard scales and the Bethlehem payrolls. But we also asked for the estimates to find out what rate Bethlehem used in arriving at these estimated prices in the contracts, because Bethlehem was contending that the base rate used was much lower than the base rate that the Fleet representatives contended was used, and therefore Bethlehem was asking for a much larger increased wage to be added to the estimated price than the Fleet Corporation representatives thought they were entitled to ask.

BY THE MASTER:

Q. Do you mean that the figure that you were trying to get was the base labor item, we will say, used in accordance with the terms of the contract to determine the increase, or the item used in the estimate that was furnished to the Shipping Board for the contract ships? They are two different things, are they not?

A. That is right.

Q. Which were you trying to get?

A. I was trying to get both.

Q. Both, all right—Now then, in trying to get the figure that was used as the estimate for the item of labor used in the proposal for the contracts, what did the Shipping Board people give you to check against, if anything? Let me put it this way: Did they give you the breakdown that was set forth in

the letter from Mr. Powell to the Emergency Fleet Corporation dated December 19, 1917?

A. I had the letter of December 19, 1917, and from that letter, as I recall—

MR. BROWN: Would you like to see the letter? There is no use guessing about it.

(Witness handed letter.)

THE WITNESS: There were two of them were very close there.

BY THE MASTER:

Q. What I have reference to appears on page 228 of the book you have in your hand.

A. I have had a copy of this letter a long time.

Q. Did you have it at the time you started to get this fact that you started after?

A. Yes, we had this letter.

Q. All right. You said you made a general audit, or a general audit was made under your supervision. Did your general audit include these items that entered into this estimate, other than the item of labor?

A. I did not make a general audit. I made an audit of Overhead of Administrative and General expense, and Depreciation. Later on I got into the Wage Increase audit, and to a small extent the Material matters, but I did not make a general audit.

Q. In your audit of Administrative, Selling and General, did you attempt to check this item in the letter of December 19 of $18.75 for 10,000-ton tank vessels?

A. No, I was not concerned with the cost per ton of Administrative and General expense at the time. I was concerned with the actual expenses that were incurred that we were required to pay as cost.

Q. So that your general audit did not go into the figures that were used in the breakdown for the estimate?

A. No.

Q. But it was directed to the actual cost; is that correct?

A. That is right.

Q. After the contracts were entered into? Your audit began after the contracts were entered into and the work started?

A. Oh, yes, much after that.

Q. I mean to say, it related to the figures that were on the books after the contracts were entered into?

A. Yes.

Q. And I suppose the same thing is true of the items of Material and Operating Expense that go with the item of Labor named, $187.50? You did not audit those items either, or attempt to find them on the books of Bethlehem?

A. You mean these particular figures that are set out in this letter?

Q. Yes.

A. No, I did not try to find those.

MR. BROWN: I do not know that the witness understands your question.

THE MASTER: I understood that the witness has said that he was trying to find the total that represented the item of Labor in this estimate; that he was trying to find two things, the Wage Schedule as applied to the Bethlehem plants as of January 3, 1918, and the item of Labor that entered into the estimate of December 19, 1917. I am trying to find out from him to what extent, with the books of Bethlehem

available to him, he directed his efforts to get the item of Labor that appears in this estimate on the figure of $187.50. Maybe I have not made it clear.

BY THE MASTER:

Q. You say you had that letter of December 19, 1917, with you?

A. I had the letter, yes. I had seen the letter.

Now in the letter of December 19, 1917, there appears an item in the 10,000-ton tank vessels of $187.50 per dead weight ton, in which is included Labor, Materials and Operating Expense that you used?

A. Yes, sir.

Q. What I was asking you was whether, in endeavoring to find what you said you were trying to find, and that is the base figure of Labor that entered into this estimate—whether you attempted to break that figure down by using the facts that were available to you at Bethlehem?

A. I did not attempt to break this down, because anything that was available to me in connection with the ships that were already built, I could not prove that $187—or rather, how it was made up.

Q. I am just asking, you did not try?

A. No, I could not.

BY MR. HALLETT:

Q. Was there anything in the books of Bethlehem that you saw that would have helped you in making any breakdown of that $187?

A. Absolutely nothing.

Q. Of the past ships, I mean, the cost of preceding ships?

A. The thing has gotten to be a little confused. I was not concerned with the cost of any ships that

were built prior to the contract ships, except one or two cost-plus requisition ships.

THE MASTER: I understand that.

THE WITNESS: Now from the figures that I examined, I could not make any attempt to break down a figure of $187.50. In fact, I did not make any such attempt.

BY THE MASTER:

Q. That is what I understood, you made no such attempt?

A. No, sir.

Q. What you did, as I understand it, so that I will get it clearly in mind, was to ask the Bethlehem representatives whether they had the details on which they based their estimate?

A. Yes, sir.

Q. And you say they told you they did not have such details?

A. Yes, sir.

Q. And you made no effort from their books to supply those details by attempting to reconstruct it yourself?

A. I did not.

Q. As I understand it, so that it will be perfectly clear, your request was not to the officers for the estimate of any one or another particular ship or class of ship but it was a request generally for their figures in details on which their various estimates were presented to the Shipping Board?

A. That is right.

Q. That they told you they did not have?

A. Yes, sir.

BY MR. EVANS:

Q. The payrolls were available to you, weren't they, for the plant at Fore River?

A. Yes.

Q. So that you could have taken those payrolls, we will say for the month of December, 1917, and you could yourself have determined what the wage rate was at Fore River in December of 1917?

A. I thought I explained that, that the payrolls were available, that in trying to develop a wage rate we used the payrolls; that they paid many rates other than were specifically set out in the Navy Yard scales. I had that available.

L. R. SANFORD, having been duly sworn, was examined and testified as follows:

BY MR. HALLETT:

Q. What is your address?

A. 836 Rittenhouse Street, Washington, D. C.

Q. You are employed by the Fleet Corporation at the present time?

A. I am.

Q. In what capacity?

A. Capacity of technical expert of the Bureau of Law.

Q. What has been your education and your experience?

A. I am a graduate of the University of Michigan, Department of Engineering and in Naval Architectural and Marine Engineering. Subsequent to graduation I became a draftsman in the Navy Yard at Washington, D. C. From there I went to Chicago and engaged in mechanical engineer work for a period of a year or two and from there I became

associated with the United States Engineer Corps at Rock Island, Illinois, in charge of the design and construction of floating plants, which includes all classes of vessels used by the Engineer Corps. I remained with them a period of some three years, I believe it was, and then came East and was for a short time employed in Boston in the office of Naval Architects there by the name of Swaze, Raymon & Page. I then went to Chicago and became Chief Engineer of the Improved Combustion Company, and I left them in the Fall of 1917 to go with the Emergency Fleet Corporation as resident inspector at Manitwok, Wisconsin.

Q. What do you mean by resident inspector?

A. Resident inspector for the two ships under construction at that place, under contract with the Emergency Fleet Corporation.

Q. How long did you remain at these plants?

A. Until the fall of 1920. I took one of the last ships out of Manitwok as an engineer on the ship and then proceeded to the home office of the Fleet Corporation at Philadelphia where I became an engineer in the Ships Claims Division and eventually was transferred to the changes and extras branch, later on became head of that branch, which was, in effect, the estimating department of the Fleet Corporation.

BY THE MASTER:

Q. When was that?

A. That was some time in 1922. Early in that year the construction division of the Fleet Corporation was removed from Philadelphia to Washington, and I, of course, went with them in that move. I remained with the construction division in various capacities, eventually taking charge of all

wood and steel ship construction activities, under the manager, until the abolition of the construction division in 1926, I think it was, at which time I was transferred to the Legal Division, as it was then called, to take care of technical matters in connection with litigation and also to clear up the tail ends of the construction program. I am still with the Legal Division, now called the Bureau of Law. I am also a member of several technical societies; including the society of Naval Architects and Marine Engineers and the American Society of Mechanical Engineers.

BY MR. HALLETT:

Q. Do you hold what is called a ticket on ships?

A. I do hold a Marine Engineer's ticket.

MR. HALLETT: I want to offer this physical exhibit G-173, the invoices for plates and shapes of Hulls 253 and 254, submitted by Bethlehem at the request of the Government.

(Admitted without objection as Exhibit G-173).

Q. Have you read the written explanation of the chart as given by Mr. Brown and represented by Exhibit G-154?

A. Yes, I have.

Q. Directing your particular attention to the part which relates to his method of arriving at the cost of a ship similar to Hull 253, have you made an examination of the information furnished to the Government by Bethlehem, including the invoices for plates and shapes of Hull 253?

A. I have.

Q. As a result of your examination did you find

that the cost of plates for 253 delivered base cost was the same as the delivered base cost of shapes?

A. No, it is not.

Q. What is the difference between plates and shapes? What are they?

A. Well a plate is a piece of flat rolled steel in connection with ship work used to enclose the skin of the ship on a frame work which is substantially built up out of shapes. That is about the best distinction I can make.

Q. Do the plates and shapes appear in Job 12 mainly?

A. Yes.

Q. Is there an appreciable amount of shapes used in Job 12 in the construction of a ship similar to Hull 253?

A. Yes.

Q. Was the purchase base cost delivered of shapes higher than that of plates or lower in the case of 253?

A. In the case of Hull 253 as reflected by the invoices the delivered price of shapes was considerably higher than that of plates.

Q. Did the invoices furnished by Bethlehem cover all of the plates and shapes that you saw as compared with the information furnished by Bethlehem of the total amount of plates and shapes purchased by them for Hulls 253 and 254?

A. No, they did not.

Q. Did Bethlehem furnish the information as to the average delivered cost of plates and shapes for Hulls 253 and 254?

A. Yes.

Q. Was the price of shapes also fixed by agree-

ment by War Industry Board in the Fall of 1917, as well as plates?

A. Yes, the price of both plates and shapes were fixed by the War Industry Board in the Fall of 1917.

Q. What was the price of plates?

A. The base price of plates at the mill was $3.25 a hundred.

Q. What was the price of shapes at the mill?

A. The corresponding price of shapes was $3.00 a hundred.

Q. What was the effect of Mr. Brown's assumption that plates should be used alone in determining his factor of increase for Job 12 as it affected the cost of plates and shapes in that job?

A. The effect of using plates alone for determining a factor of increase was to determine for shapes a factor much higher than the appropriate factor for these particular shapes.

Q. Is that because the shapes for 253 were purchased at a much higher price than for plates and the War Industry Board's price for shapes was much less than for plates?

A. It was because the price of plates for 253 was lower than that of shapes and the price of plates as fixed by the War Industry Board was higher than that of shapes.

Q. Have you made a calculation as to how much this excess amounted to resulting from the use of the factor 2.66 on the price of plates on Job 12?

A. I have.

Q. What is that amount?

A. The excess included in Job 12 by applying to plates and shapes in that job a factor 2.66 as compared with the proper factors which apply respec-

tively to plates and shapes in Job 12 is approximately $38,600.

Q. Now you say by applying the proper factors. What factors did you apply and how did you arrive at them in arriving at that sum of approximately $38,000?

MR. EVANS: Can we get that figure accurately?

THE WITNESS: I can give it to you in dollars and cents if you want it.

MR. EVANS: I would like to have it.

THE WITNESS: $38,623.21.

BY MR. HALLETT:

Q. (Previous question repeated.)

A. I applied to plates in Job 12 a factor 2.604 and to shapes in Job 12 a factor of 1.80. The application of those factors to the respective amounts in Job 12 which apply to plates and shapes as compared with the application of a 2.66 factor to the same amounts, give the figure that I have given.

Q. How did you arrive at those two factors?

A. In this way. I took the total amount of steel in Job 12 as furnished to us by Bethlehem, I mean by total amount the total weight at the average price also furnished by Bethlehem for that weight of steel, which gives me the total amount paid for that steel. I then took a proportion of the total amount as applied to plates and shapes, in accordance with information furnished by Bethlehem to the effect that of the total of the plates and shapes 71 per cent. approximately, would constitute plates and 29 per cent., approximately, would constitute shapes. In that way I determined of that total weight what was plates and how much was shapes.

I then took the total delivered price of plates as reflected by the invoices, which, according to my calculation, was 1.3818, and applied that to the total weight of plates already determined as I have explained, and that gave me the cost of plates included in Job 12. Deducting that from the total cost of plates and shapes included in Job 12 I obtained the corresponding cost of shapes. I then divided the cost of shapes by the total weight of shapes to get the unit price of the shapes. I then had the unit price as far as 253 was concerned of shapes and of plates and I had to determine then the corresponding current price of plates and shapes based on the War Industry Board prices. To do that I took the base price as fixed by the War Industry Board of $3.25 for plates and $3 for shapes, added to that the freight from Pittsburgh to Fore River, and added also to that—

BY MR. WOOD:

Q. What is it you are reading from, some memoranda you have already written of your testimony there?

A. I haven't written my testimony but I have written the figures out.

Q. I noticed you turned over page after page.

A. You will appreciate that I cannot carry all these figures in my head.

BY MR. EVANS:

Q. You are giving us your figures not from recollection but from data that you prepared at some time?

A. Yes.

Q. So that your figures are accurate now?

A. I take it they are, yes.

BY MR. HALLETT:

Q. Will you continue with your answer?

A. As I was stating when I was interrupted I then added to that an allowance of 10 cents for increased rate handling and so forth that was made by Mr. Brown in his calculation, and, in addition, added the average extras per pound each for plates and shapes as determined from the invoices furnished to the Government by Bethlehem for these two hulls. That gave me a total current delivered price at Fore River for plates and for shapes. In the case of plates the price was 3.5978 and in the case of shapes it was 3.3325. The ratio of these delivered prices obtained as I have explained with the average delivered prices for 253 and 254 also obtained as I have explained, gives me the factor of increase respectively for plates and for shapes and those two factors, as I have stated, were, for plates 2.604 and for shapes 1.80.

Q. Did you make an allowance for extras in arriving at that factor?

A. I did.

Q. From your examination of the invoices what was the base price for plates delivered to the plant at Fore River for Hull 253?

A. As I recall it the base price of plates delivered at the plant of Fore River for Hull 253, as shown by the invoices, was $1.364, that is per hundred pounds.

BY MR. EVANS:

Q. Are you now drawing on your unaided recollection or have you got a memorandum of that?

A. I am now telling you what my memory gives me.

Q. But you haven't got that figure down on your memorandum?

A. You may look at it and see.

Q. I am asking you?

A. No, I have not.

BY MR. HALLETT:

Q. Now, with respect to the other material in Job 12, other than plates and shapes, what is the general character of that material?

A. According to information furnished by Bethlehem, the general character of material in Job 12, other than plates and shapes consists of bars, rivets, certain castings, certain forgings and some other miscellaneous material not specified.

Q. Was it a fact that material other than plates and shapes increased in price over the period covering from the start of the construction period of Hulls 253 and 254 down to November, 1917, as rapidly as plates and shapes?

MR. EVANS: I was wondering whether Mr. Sanford is really qualified to answer that question. I haven't heard that he has had any experience with prices of materials.

THE MASTER: You better qualify Mr. Sanford to answer that question.

MR. HALLETT: I will withdraw the question.

BY MR. HALLETT:

Q. Is there any particular difference with respect to the other material than plates and shapes in Job 12 than in connection with the material outside of Job 12?

MR. EVANS: Objected to. Let him tell us what the materials in Job 12 other than plates and shapes consist of and what the materials other than that in Job 12 consist of and then it

will be for the Master to determine whether they are substantially the same types of material.

MR. HALLETT: I think I have already shown what material other than plates and shapes was in Job 12.

MR. EVANS: All right, then let him tell us what the other material was and it will be for the Master to say whether they are similar.

THE MASTER: The objection I think is of sufficient merit to call for that qualification.

BY MR. HALLETT:

Q. What is the character of materials outside of Job 12 that goes into Hulls similar to hull 253 and 254?

A. It consists of a large quantity of miscellaneous materials and various characters of material. In fact all the other materials that go into the make up of a ship.

Q. Can you enumerate what they are?

A. I can enumerate some of the major items. It would take all day and possibly longer to enumerate them all.

Q. Will you give us the principal items that go into the ship outside of Job 12?

A. For instance, one of the large items is machinery of all kinds, including engines, boilers, pumps and various auxiliaries, all of the rigging, all of the life saving equipment, all the deck fittings, all of the joiner work, all of the carpenter work, all of the plumbing, all of the piping, in fact all of the thousand miscellaneous items that go to make up a ship with the exception of those in Job 12.

Q. The plates and shapes to a certain extent may be included in it?

A. To a small extent, yes.

Q. And there are steel forgings and castings that go in jobs outside of Job 12 you say?

A. Certain ones.

Q. And were many of the items which go into Job 12, outside of Job 12, the subject of regular quotations in trade journals?

A. Yes.

MR. EVANS: When?

MR. HALLETT: That question is withdrawn.

BY MR. HALLETT:

Q. In your opinion is there any reason for applying a higher factor to the materials outside of Job 12 other than plates and shapes—I mean than to materials outside of plates and shapes in Job 12 than to the material outside of Job 12.

MR. EVANS: Objected to on the ground that so far at least this witness has not qualified himself to answer the question.

(Objection sustained.)

BY MR. HALLETT:

Q. Have you made a calculation using Mr. Brown's factor of 1.75 which he applied to material outside of Job 12, to the material in Job 12 other than plates and shapes, instead of Mr. Brown's factor of 2.66?

A. Yes.

Q. What is the calculation?

MR. EVANS: Objected to. What possible relevance can that have?

MR. HALLETT: I think that can have a great deal of relevance.

THE MASTER: What is the purpose of it, because your witness has said that he has adopted a totally different factor in making his calculations on the plates and shapes in Job 12.

MR. HALLETT: All he has done is to take and apply the actual figures on plates and shapes and has made a distinction between plates and shapes to which the data which was available to Bethlehem and to Mr. Brown applies and then taken Mr. Brown's own factors for the materials outside of Job 12 of plates and shapes to show what that is.

THE MASTER: It is a mathematical calculation, if Mr. Hallett wants to use it in a convenient way and this witness has done it, that I would rather we take than argue about it.

MR. EVANS: My point is this, that if he is going to give us a figure based on a figure he says is proper and not to affect Brown but so he could justify the factor he used—now he has justified the factor he placed on plates and shapes. Now he proposes, instead of using Brown's factor of 2.66 on materials in Job 12 other than plates and shapes, he is going to use another, and if he does I say it is meaningless until he first justifies the factor he proposes to use.

THE MASTER: Up to the present moment its relevancy does not appear. Mr. Hallett says he has a purpose in using a mathematical cal-

culation and it is only a question of whether we do it ourselves or let the witness do it.

MR. EVANS: No objection then if he asks the witness the result he would arrive at.

MR. HALLETT: That is all I did ask.

BY MR. HALLETT:

Q. What is the calculation?

A. I will refer, if I may, to my calculations.

MR. EVANS: Why, of course, I want you to be accurate as far as you can.

THE WITNESS: The material in Job 12, Hull 253, other than plates and shapes, amounts to $39,459.52. The application of a factor 2.66 to that figure gives $104,962.32. The application of the factor 1.75 to the same figure gives $69,154.16.

BY MR. HALLETT:

Q. And the difference is?

A. And the difference between those two total figures is $35,808.16.

Q. Was the price of rivets quoted in publications from 1915 down to approximately the time of the War Industry Board fixation?

A. Yes.

Q. Was the price of rivets fixed by the agreement of the War Industries Board?

A. Yes.

Q. Have you compared the price of rivets at the time when the shapes were purchased for Hulls 253 and 4 as shown in these publications with the price as fixed by the War Industry Board?

A. I have compared the price of rivets, that is the quoted price of rivets, at the time the quoted

price of shapes is $1.80, with the War Industry Board's price for rivet.

Q. What was the War Industry Board's price?

A. The War Industry Board's base price was $4.40.

Q. And what is the factor of increase with respect to rivets to be applied?

MR. WOOD: We haven't yet had what the price was at the earlier period or what the source of his information was or what he knows about it.

THE WITNESS: I said that I took the price of rivets at the time that shapes were quoted at $1.80.

BY MR. WOOD:

Q. That was the price of shapes, not rivets?

A. The $1.80 referred to the price of shapes.

BY MR. HALLETT:

Q. And what was the price of rivets at that time?

A. $2.46 base.

BY MR. WOOD:

Q. And what was that date, please?

A. I cannot tell you offhand the date because I haven't a memorandum of it here, but it was at the date at which $1.80 was quoted for shapes, and would be approximately, I should say, about December, 1916.

BY MR. HALLETT:

Q. Have you a copy of the list with you?

A. I have it in my brief case. I haven't it here.

Q. Will you get it?

A. The price of shapes was quoted—the nearest price that I could get was December, 1915, at which time the price on shapes was quoted at $1.78, or

very nearly the $1.80 price that I had reference to, and the price that I took for rivets was also the price quoted in December, 1915, namely $2.46.

Q. When was the keel laid on these ships?

A. I can't tell you exactly from memory but if my memory serves me right it was approximately 5 months after that time.

Q. Does that appear in the information that was furnished to you?

A. I believe it does.

MR. WOOD: I object to testimony of the witness as to what the price of rivets was in December, 1915, no foundation of any description having been laid for the fact that it was at that time or approximately at that time that the rivets that went into 253 were purchased, the witness having stated himself that the keel of the ships was not laid until five or six months later.

BY MR. HALLETT:

Q. Have you the price of rivets at the time the keel of these ships was laid?

A. If I can determine accurately the date the keel was laid I can tell you the equivalent price of rivets, yes.

Q. Assuming that the keel was laid, as given in the information furnished us by Bethlehem, and assuming that is accurate, take the date of May 18th, 1916, referring to Exhibit G-6?

A. In May, 1916, the quoted price of rivets was $3.875.

Q. So that rivets had gone up from the date you used to the time at which the keel was laid on these ships is that right?

A. Yes, very materially.

Q. And what would be the effect of that increase in the factor which would be derived from using the War Industry Board's price?

A. It would very materially decrease the factor.

Q. And what was the factor using the figures that you used?

A. The factor using the figures that I used was 1.77.

Q. And if you used the time which was suggested to you by Mr. Wood of the actual laying of the keel, that factor would be affected how?

A. Very much less than that.

Q. Now did you make the same kind of a calculation from the same data with respect to the price of bars?

A. I did.

Q. And what is the factor that you arrived at with respect to the increase of bars on the same dates that you have used on rivets?

A. 1.57.

BY THE MASTER:

Q. Could you give us the date when the War Industries Board fixed the prices you have referred to?

A. I can't tell you offhand but it was in the Fall of 1917.

Q. Prior to November 1, 1917, was it?

A. I wouldn't even care to say that without verifying the facts.

THE MASTER: I would like to have that fact of record.

BY MR. HALLETT:

Q. Directing your attention to the statement in

Mr. Brown's explanation with respect to the method applied to Hulls 158 and 159, as I understand it, he based his explanation upon the fact that because the cost per light weight ton of labor and materials of Hulls 253 and 158 were approximately the same, and they were built in approximately the same period, it was proper to apply the same factors. Have you been furnished with the light weight tonnage of both 253 and 158 and 159 by Bethlehem?

A. Yes, sir.

Q. Was the total cost per light weight ton of the two ships for material and labor the same?

A. No.

Q. Can you remember what the individual cost of both labor and material for each ship was?

MR. EVANS: Are you now giving us something from your unaided recollection or have you a memorandum to support the figures you are going to give us?

THE WITNESS: I have the actual figures if you want me to use them.

MR. EVANS: Let us have the accurate figures rather than from memory.

THE WITNESS: The total cost of material and labor per light weight ton for Hull 253 was $89.90, and for material and labor of 158 was $95.80.

BY MR. HALLETT:

Q. So that the larger ship built in Sparrows Point plant cost approximately $5. to $6. a per light weight ton more than the smaller ship at Fore River?

A. On the basis of these figures, yes.

Q. And these are based on the figures furnished to you by Bethlehem as to the light weight tonnage of the two ships and the figures used by Mr. Brown in his explanation?

A. Yes.

Q. Now if two ships were built in the same yard under the same accounting conditions, the same labor conditions, and the material purchased at the same rate, what would you expect the cost per light weight ton of the smaller ship to be as compared to the cost per light weight ton of the large ship?

A. I would expect cost per light weight ton of the smaller ship under those conditions to be greater than that of the larger ship.

Q. Why is that?

A. That is because, with respect to both labor and material the fact that items are purchased in larger units, heavier weights involved and so on and so forth, makes the unit price on a weight basis less for the larger ships where the larger and heavier items are involved.

Q. Were the individual costs per light weight ton of material and labor of the two ships the same?

A. No.

Q. What were the relative costs of material in the two ships per light weight ton?

A. The cost of material per light weight ton for Hull 253—just a moment. Did you ask me for the total cost of labor and materials?

MR. HALLETT: Yes.

THE WITNESS: Well, I informed you wrong, because I have given you the cost of material alone instead of the cost of material and labor. All of the figures that I have just given

you apply to material alone. I read the wrong figures.

Q. Now what was the total labor and material cost per light weight ton on the two ships?

A. For Hull 253 it was $165. per light weight ton and for Hull 158, it was $168.50, both approximate.

Q. Now what was the cost per light weight ton of labor of the two ships?

A. For labor the cost per light weight ton for Hull 253 was $75.20 and for Hull 158 it was $72.60, approximately.

Q. As the result of that figure that you have now given, it is shown that the cost for material of the larger ship was considerably in excess of the cost of material in the smaller ships, speaking in light weight ton terms, is that it?

A. On the basis of cost per light weight ton that is so.

Q. Have you examined the information furnished by Bethlehem with respect to the cost of plates and shapes that entered into Hull 158 and 159?

A. I have.

Q. Was the delivered cost of plates and shapes for 158 and 159 the average cost I am speaking of, approximately the same, or was it higher than the average cost of plates and shapes purchased for 253?

A. It was considerably higher on 158 and 9 than it was for 253.

Q. As I understand it, when the prices for plates and shapes were fixed in the Fall of 1917, it was fixed for all plants along the coast, was it not?

A. Well the price was fixed as a base price at Pittsburgh.

Q. So that there would be no difference in the price for plates and shapes for Hull 158 and 159 had been purchased at a higher rate, there would be no basis for an assumption that the War Industries Board prices for the same plates and shapes in Sparrows Point would be increased correspondingly above those at Fore River?

A. No, the War Industries Board prices would remain the same. The only difference in the delivered price would be due to the influence of freight.

Q. Was the freight larger or smaller from Pittsburgh to Fore River than Sparrows Point?

A. The freight from Pittsburgh to Fore River was greater than the freight from Pittsburgh to Sparrows Point.

Q. Bethlehem did not furnish us invoices of the plates and shapes that went into Hulls 158 and 9, did they?

A. Not so far as I know.

Q. The only thing that you saw was the total cost of plates and shapes at an average price of purchase?

A. Yes, and the weight.

Q. Was it possible for you to take that average price and arrive at an average price of plates and shapes delivered under the War Industries Board prices at Sparrows Point?

A. Yes.

Q. And determine a factor that should be applied to the cost of plates and shapes at Sparrows Point for a hull similar to 158 and 159?

A. Yes.

Q. And did you do that?

A. I did.

Q. And what was the result of your calculation and how does it compare with Mr. Brown's calculation using his factor of 2.66?

A. The difference between the result obtained by applying to the total of Job 12 as used by Mr. Brown, namely $267,000., the factor of 2.66, as compared with the factor determined by me of 1.895, is $204,255.

Q. Now, with respect to the cost of materials other than Job 12, if you make an investigation and find plates and shapes had been purchased at a higher price and therefore presumably a later date than the Hulls at Fore River, would you feel justified in using the same factors for materials other than plates and shapes or other than Job 12, as you applied in Fore River?

A. If those were the conditions it would to me call for an investigation as to the propriety of using the same factor for other material as had been used in the case of Hull 253.

Q. Have you made any calculation as to what would be the result if you used 1.75 on materials others than plates and shapes in Job 12 instead of 2.66?

A. Yes, I have.

Q. What is that?

A. The application of the factor 2.66 to material other than plates and shapes in Job 12 on Hull 158, result in a figure of $144,500., and the application of the factor 1.75 to the same figure results in a total of $95,000., a difference between the two of $49,500. Now, I would like to explain that part of this $49,500 is already included in the figure of $204,000. because those factors there were applied to the total of Job 12 and not to plates and shapes

alone and therefore I don't want anybody to get the idea that the $49,000. should be added directly to the $204,000. to get the total difference.

Q. Can you give the total amount of excess in the calculation of the factor 2.66 on Job 12 over the application of the factors used by you for plates and shapes and the factor of 1.75 for materials other than Job 12?

A. Yes.

Q. What is that?

A. $212,128.50.

Q. Were you given an opportunity of comparing the plans and specifications of certain of the vessels indicated in the schedule shown in Exhibit G-6?

A. Yes, sir, I was.

Q. Did you examine the plans and specifications of Hulls 253 and 254 and compare them with the plans and specifications of the contract ships built under contract 183 to determine their similarity?

A. I did.

Q. Were they exactly similar or are there differences?

A. There are differences.

Q. What are the differences?

A. There are a number of them. I will refer to my records. The vessels constructed under contract 183 at Fore River were different from Hulls 253 and 254 substantially in these respects: they had six less summer tanks with hatches, with corresponding decreased piping. They had one less pump room. They had two large cargo pumps as against 12 small pumps for 253 and 254, with the corresponding decreased piping. They had smaller condensers. They had a single circulating pump

engine instead of duplicate engines. They had steel exhaust pipes instead of copper, except for the main exhaust. They had smaller donkey boilers and the donkey boiler was coal burning instead of oil burning. Three boilers were fitted abreast instead of one forward of the two as in 253. The bulkhead arrangement was different on account of the different boiler arrangement. In addition to that the contract hulls were constructed with channel framing instead of bulb angle framing as in Hull 253.

Q. Did you find that the ships built under contract 183 were substantially the same as 268 and 9 built and requisitioned?

A. Yes, they were substantially the same ships.

Q. And were the ships built under contract 183 the more expensive or a less expensive ship to build than Hull 253?

A. Comparatively they were a less expensive ship to build.

Q. And a substantially less expensive?

A. I should say so, yes.

(Recess from 1 o'clock to 2 o'clock P. M.)

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2 p. m.

L. R. SANFORD, direct examination resumed.

BY MR. HALLETT:

Q. As I understand it, just previous to the recess you had said that you had examined the plans and specifications on several of the hulls included in the schedule known as Government Exhibit G-6?

A. I did.

Q. And compared those with the plans and specifications of hulls covered by different contracts which were were ultimately made with Bethlehem and the subject of this suit?

A. That is right.

Q. Before I go into that, did you examine the plans and specifications of Hulls 158 and 159, the Sparrows Point hulls used by Mr. Brown in his explanation, to see whether or not the hotel equipment and navigating equipment was part of the specifications to be delivered by the shipbuilder to the purchasers?

A. I was.

Q. Was navigating equipment and hotel equipment part of the specifications of those vessels?

A. It was included in the specifications.

Q. Did you compare the specifications and plans of hulls 150, 151, 153 and 170, being the ships constructed under Contract 191 with Bethlehem, with the plans and specifications of ships on G-6 constructed at Union plant?

A. With certain ships shown on Exhibit G-6.

Q. And what were those ships?

A. They were hulls 132, 133, 136, 137, 138, 139 and 142.

Q. Did you find that the hulls constructed by Bethlehem under Contract 191 were substantially similar to the other hulls previously constructed by Bethlehem at Union, which you have just enumerated?

A. Substantially so, with the exception of hull 170 of Contract 191.

Q. Was hull 170 a different type of ship?

A. Somewhat different, yes.

Q. In what respect did hull 170 vary or differ from the previous ships?

A. It was a longer ship, a shallower ship, and had one less deck. Those are the main differences.

Q. In your opinion, was hull 170 a cheaper or a more expensive ship to build than the previous ships constructed by Bethlehem?

A. I should say it was substantially the same—referring to the other ships which I have enumerated.

Q. What were the differences, if any, which existed between the other ships covered by Contract 191 and those previous ships?

A. About the only substantial differences were in respect to machinery. In the seven so-called basic ships, my recollection is that five of them were reciprocating engine jobs and two of them were turbine jobs, and part of the ships under Contract 191 were reciprocating engine and part were turbine. Naturally, if you are comparing two ships you should probably compare engine job with engine job and turbine job with turbine job.

Q. Is it possible to evaluate the differences that may be occasioned by the fact that one ship is a turbine job and the other ship has a reciprocating engine?

A. It would be possible to do so approximately, yes.

Q. Is there any ultimate difference in the cost of two ships of a similar type, one having reciprocating engines and the other turbine engines? Is the total difference in cost a material item?

A. Not very material, no.

Q. With respect to the situation confronting Bethlehem, would there have to be any adjustments

of the estimates of labor and material occasioned by the difference between turbines and reciprocating engines?

A. I should say that if you were going to use these so-called basic ships as a basis for an estimate, if you were going to estimate on a turbine job you should adjust them to a turbine basis, and, vice versa, if you were going to estimate on a reciprocating job, you should adjust them to a reciprocating basis.

Q. What effect would the adjustment have with respect to labor and material under the Bethlehem situation?

A. If I am correct in my assumption that Bethlehem at that time built its own reciprocating engines and bought its turbines, the effect of that situation would be to somewhat increase the labor item in the case of a reciprocating engine job over a turbine job, and likewise to somewhat decrease the material item.

Q. From the information which was furnished to the Government by Bethlehem, was it possible for you to determine what was the approximate base rate of labor, the average base rate of labor, under which those base ships were constructed, or, if I can use the term, the effective construction date of those vessels?

MR. EVANS: What ships are you referring to?

MR. HALLETT: I am now referring to the ships which he used for comparative purposes, being hulls 132, 133, 136 to 139 inclusive, and 142.

A. Bethlehem furnished us with a statement of

the plant earning rate and the labor expended by months on these various ships, and also advised that the plant earning rate could be adjusted to the direct labor earning rate by deducting approximately three per cent., and by so doing and dividing that adjusted rate into the monthly labor item, it was possible to determine the number of man hours per month, and also, naturally, the total number of man hours; and dividing the total number of man hours into the total labor cost, you determine an average labor earning rate.

Q. And that average labor earning rate, so determined for those ships, is approximately analogous to the average rate which Mr. Brown used in 253? I do not mean the same figure, but it means the same thing, does it not?

A. I should judge that it did, yes.

Q. What was the date of the effective construction of these base ships that we have been talking about at Union?

MR. EVANS: I doubt if that means anything to anyone.

THE MASTER: Let us put on the record here a definition of what you mean by base ships.

MR. HALLETT: The base ships we are referring to are the base ships which were constructed at Union Plant prior to January 1, 1918, and which were analogous or similar to the contract ships covered by Contract 191.

THE MASTER: And are the ships referred to as constructed at Union Plant in Exhibit G-6?

MR. HALLETT: Yes, sir. With respect to what the effective construction date of those ships is, by an examination of Exhibit G-6—

MR. EVANS: Why do you not state on the record what you mean by it?

MR. HALLETT: That is what I want to do, but I wanted to say that on G-6 there is a column there at the Union Plant consisting of 132, 133 and several other ships which were constructed as you notice, that is, the keels were laid at different dates, and the completion or delivery dates. What the effective construction date means is an attempt to determine the rate that existed at the average period during which those ships were being constructed. In other words, take hull 253. That ran over an extended period of time and the rate varied, but the average construction rate of that—I have forgotten the figures, but take for example .35 or .3875, and this was an attempt to give the result with respect to the various similar base ships.

BY MR. HALLETT:

Q. What was the effective construction date of the seven or more base ships constructed at Union which you used for comparison with Contract 191?

MR. EVANS: I would like to know whether you are going to give us the effective construction date of each vessel, or the average construction date of the whole group.

THE MASTER: He has asked for the average.

MR. HALLETT: Of the whole group.

THE MASTER: If the question is answered, it would be the average.

A. The effective construction date of hulls 132, 133, 136, 137, 138, 139 and 142 at the Union plant was March or April, 1917. By that I mean the date at which, if all the labor expended on those jobs could have been concentrated at the rate effective as of that date, that would produce the total labor expended on those ships.

BY MR. HALLETT:

Q. From the information received from Bethlehem, were most of those ships carried as one job, do you remember?

A. My recollection is that they were, although I am not very clear on that. The exhibit should show.

Q. With respect to the ships covered by Contracts 230 and 301, which were contracts covering vessels to be constructed at the Union plant, did you make a study of the plans and specifications of those ships?

A. I did.

Q. And compare them with the plans and specifications of the same base ships we have been referring to?

A. I did.

Q. And what did you find as a result of that examination?

A. The vessels of those two contracts are substantially similar to hull 170 of Contract 191, and, that being so, as far as cost is concerned substantially comparable with the seven base ships that we have referred to. About the only difference that exists, if I remember correctly, is that those were

engine jobs and some adjustment should be made on that account, as I previously explained.

Q. With respect to the ships covered by Contract 177, the 10,100-ton tankers constructed at the Union plant, have you compared the plans and specifications of those ships with any of the ships on schedules referred to in G-6?

A. I have.

Q. With what ships did you compare those?

A. With hulls 130, 140 and 141.

Q. What does your comparison of the two sets of plans and specifications disclose?

A. It discloses that there were a few differences between the ships of Contract 177 and the three hulls 130, 140 and 141—not very substantial differences.

Q. Can you tell what those were?

A. Yes.

Q. What were they?

A. The vessels of Contract 177 were fitted with two less summer tanks and hatches than the three base ships, and with corresponding decreased piping on that account. They were not fitted with super heaters, and they were fitted with reciprocating engines as compared with turbines on the three earlier ships.

Q. All other things being equal, would the costs of labor and materials on the ships covered by Contract 177 be more or less than the cost of material and labor in the base ships used by you?

A. In the matter of total cost there would not be much difference.

Q. What was the effective construction date of the hulls 130, 140 and 141, which were tankers previously built in the Union plant?

A. It happens to be the same as for the cargo vessels, March or April, 1917.

Q. With respect to the 10,100-ton tankers covered by Contracts 301, 179, 226 and 300, whether or not they are the same kind of tankers covered by Contract 177?

A. Yes, they are substantially the same.

Q. And what you have said with respect to a comparison of the plans and specifications of the ships covered by Contract 177 and your base ships, would apply also to the ships covered by Contracts 301, 179, 226 and 300?

A. That is correct. If I may correct you slightly, I believe there were other types of ships under 301. I am referring, of course, only to the tankers under that particular contract.

Q. You are referring to the tankers covered by 301. Were the ships covered by Contract 299, being 9100-ton tankers built at Fore River, practically duplicates of the ships covered by Contract 183?

A. Yes.

Q. Were the 7500-ton tankers built under Contracts 178 and 314 practically similar ships?

A. Yes.

Q. Have you compared the plans and specifications for those ships with the plans and specifications of any base ship?

A. Yes.

Q. What ship?

A. Hull 440 at Harlan.

Q. What did you find as a result of your comparison?

A. I found that the vessels under these contracts were substantially duplicates of hull 440 at Harlan.

Q. What was the effective date, construction date, of hull 440?

A. The effective construction date of hull 440 at the Harlan plant was March, 1916.

Q. Were the 7400-ton cargo ships covered by Contracts 178, 196 and 226 similar, or practically similar?

A. Yes.

Q. Did you compare the plans and specifications for those ships with the plans and specifications of any other ship previously constructed by Bethlehem?

A. I did.

Q. And what ship?

A. Hull 167 at Sparrows Point.

Q. And what did your comparison show?

A. Showed several differences between hull 167 and the contract vessels.

Q. What were the differences and what was the approximate effect upon the cost?

A. The major differences were as follows: on the contract vessels an extra bulkhead was fitted, forming a deep tank, and the double bottom tanks were fitted for fuel oil. The contract vessels were fitted with larger engines, larger condensers, and instead of two boilers, three smaller boilers were fitted. Those are the main items of difference.

Q. What was the effect of that with respect to comparative costs?

A. The effect of that with respect to comparative costs would be that the contract vessels were somewhat more expensive than the hull 167, with which they have been compared.

Q. What was the effective constructive date of hull 167?

A. September or October, 1917.

Cross Examination.

BY MR. EVANS:

Q. Mr. Sanford, I thought before I understood what you meant by the phrase "effective construction date," but I do not believe I do. Will you explain it to me again?

A. Yes. The effective construction date, as I term it, is that date at which, if all the labor expended on any ship or group of ships were reimbursed at the average rate in existence or actually being paid at that date, it would produce the total amount of labor expended on the ships. In other words, it is a so-called center of gravity of the labor, if I might put it that way.

Q. Let me put it in my language, to see if I understand it. You mean by that, do you, that if you take the average earning rate on direct labor for the month that you say is the effective construction date of the vessel, that will give you the average earning rate on that particular vessel?

A. That is correct.

Q. Now you have not determined the effective construction date, as you call it, on these cargo vessels on the West Coast for each vessel, but only as a group?

A. I cannot tell you offhand, Mr. Evans. I may have determined it for each vessel in arriving at the group date. I would have to refer back to my calculations to tell.

Q. The testimony you have given us is an average date for the entire group?

A. An average date for the entire group, that is correct.

Q. Can you give us the effective construction date hull by hull? Have you that with you?

A. No, I do not believe I can, for this reason—

Q. If you cannot, I do not care about the reason.

A. Because a number of those hulls were grouped together. The labor was not kept separately, as I recall it.

Q. You haven't got it with you, anyhow?

A. No, or at least I would have to dig a lot to find it.

Q. You said to-day that the average construction date on those Union cargo ships was March or April. Was it not rather February or March?

A. I do not think so, although, as a matter of fact, it does not make much difference, because for a period of one month the rate varies very little.

Q. I am not sure that that is the fact, Mr. Sanford, and therefore, in case it may not be a fact, we would like to get that date, for what it is worth, as accurately as we can. You testified before Mr. Roberts substantially as you have testified here, did you not? I mean you covered the same general ground?

A. Yes, so far as I know.

Q. Referring to your testimony before Mr. Roberts at page 357 you were asked what the effective construction date of the base ships was, and that question referred to the West Coast cargo vessels?

A. Yes.

Q. Your answer was, "As I recall it, the effective construction date, so termed, of those seven

vessels, was approximately March or April, 1917, or possibly February or March. I do not remember the exact date. Then later on in your testimony, perhaps after you had consulted some records, I do not know, you seem to have been more positive about that. On page 367 you were asked about the average construction of hulls 130, 140 and 141—and they were West Coast tankers, were they not?

A. Yes.

Q. And your answer was, "The average effective construction date of those three vessels was approximately March, 1917. May I at this time verify my recollection on the cargo vessels?" Mr. Brown, who was examining you, said "I wish you would," and your answer was, "I was purely speaking from recollection. February or March, 1917, I think that is about what I said before." Now the difference may be immaterial, or it may be very material, I do not know. Have I correctly quoted your testimony?

A. I believe you have, yes.

Q. And then Mr. Brown went on: "Q. In other words, the average effective construction date of the seven Union hulls previously referred to by you was February or March, 1917, and not March or April, 1917?" and your answer was "That is right"?

A. I believe so, yes.

Q. Do you wish to correct the testimony that you have given to-day accordingly?

A. If the fact is at all material I would prefer to go to my computation in which I got that and tell you exactly what the situation is.

Q. Mr. Sanford, instead of doing that, do you not recall that that is precisely what you did at the last hearing, and after having done that you cor-

rected the testimony you had previously given and you made the effective construction date on those cargo vessels February or March, and not March or April?

A. Yes.

Q. I am asking you now whether we may accept that as the correct date for the purposes of this hearing, or whether you would like to verify it again?

A. If it is material, I would prefer to verify it again. I think it is entirely immaterial.

Q. Have you anything before you from which you can verify it?

A. I have something here, yes.

Q. How long would it take you to verify it?

A. About a minute.

Q. Then let us have it accurately.

A. —I am ready.

Q. Will you tell us now?

A. Yes. According to my calculations, the average rate for those seven hulls was .3918. The average rate paid in February was .3895, in March was .3895 and in April was .3981. You see, it is somewhere between March and April. It is this period here (indicating) in which the jump occurs which covers that rate.

Q. In other words, your average earning rate on those ships is closer to the plant earning rate in February and March than it is to the plant earning rate in April?

A. That is correct, yes, sir—not the plant earning rate, the direct earning rate.

Q. The direct earning labor rate, quite right. Now apparently you can, from the figures you have

just gotten out of your files, give us the effective construction date hull by hull, can you not?

A. No, not hull by hull. I can give you the average for 132, 133, 136, 137, 138 and 139, because they were carried as a single group, and 142 was carried separately. I can give it to you for 142 and that other group, if you like.

Q. Suppose you do that.

A. For hull 142 the effective construction date I should say was June, 1917. The effective construction date for the group of six hulls comprised of 132, 133, 136, 137, 138 and 139 was between March and April, 1917.

Q. Will you tell us what experience you had had prior to January 1, 1918, in the construction of tankers or cargo vessels designed for trans-Atlantic service?

A. I had had no experience prior to January 1, 1918, in the construction of tankers for trans-Atlantic service.

MR. WOOD: How about cargo boats?

BY MR. EVANS:

Q. How about cargo boats?

A. I am answering this in my own way, Mr. Wood. With respect to cargo vessels intended for trans-Atlantic service, prior to January 1, 1918, my only experience in the actual construction of such vessels dated from October, 1917.

Q. And what was that experience?

A. As resident inspector for the Emergency Fleet Corporation.

Q. Where?

A. At Manitowoc, Wisconsin.

Q. And what kind of ships were built there?

A. Cargo vessels.

Q. What type?

A. Three-island.

Q. What size?

A. Varying between 3500 and 4200 tons.

Q. 4200 tons was the largest?

A. Yes.

Q. Steel ships?

A. Yes.

Q. You said that at one time you were hull inspector and later engineer with the United States Army Engineers on the Upper Mississippi River?

A. That is correct.

Q. What kind of work were you doing there?

A. I was in charge of the design and construction of all types of vessels constructed and built by the Engineer Corps of the Army in that district, and in some other districts.

Q. That does not tell me very much. What type of vessels were built?

A. The type of vessels built were steel river boats, steamboats, various types of derricks, hydraulic dredges, dipper dredges, barges and miscellaneous other craft of that general description.

Q. They were all river boats?

A. Yes.

Q. What steamboats were built under your direction while you were there?

A. A number of stern wheel towboats were built specifically under my direction.

Q. I am not sure that I know what a towboat is. I suppose it is a boat that tows in some way or other?

A. Exactly.

Q. Is that as far as you can go?

A. I can explain the difference between a towboat and a tug, if you like. A towboat, as used in the river, is a vessel that pushes and does not pull as a tug does, and very considerably larger than a tug.

Q. How large were those towboats?

A. As I recall it, approximately 150 feet long.

Q. They were not cargo-carrying boats?

A. Oh, no.

Q. And none of the boats with which you had any experience at that time were cargo-carrying boats?

A. That is quite true.

Q. When you went to Manitowoc, you did then for the first time have some connection with the construction of cargo vessels?

A. With the actual construction, yes.

Q. With the actual construction of cargo vessels up to, I think, an upper limit of 4200 tons, you told us?

A. That is correct.

Q. Did you have anything to do with the preparation of estimates on any of those boats?

A. You mean as to the original cost of the boats?

Q. Yes.

A. No. I did as to the changes made in them.

Q. As to changes; when?

A. During the course of construction and subsequently.

Q. When did you first commence that work?

A. I cannot tell you when I first commenced it. It ran along concurrently with the inspection work.

Q. Would you say it started in the year 1917?

A. Yes, I should say it started in the fall of 1917.

Q. But somebody else estimated on the original

cost of construction, if there were any estimates?

A. Oh, certainly.

Q. Was that an Emergeney yard?

A. No.

Q. Who owned that yard?

A. It was owned by a company. I cannot tell you who the stockholders were. It was a private concern.

MR. HALLETT: But he was not working for them, he was working for the Fleet.

BY MR. EVANS:

Q. That is what I am trying to get. It was a privately owned company?

A. Absolutely.

Q. And you were there as the inspector?

A. As representative of the Fleet Corporation.

Q. Doing what then? Checking estimates, or changes and extras?

A. Incidentally, yes; primarily to see that we got what we contracted to get.

Q. After you left Manitowoc you went into some other line of business, I think, did you not?

A. After I left Manitowoc?

Q. Yes.

A. No, as I told Mr. Hallett I took one of the last ships out of the Manitowoc Yard and then I brought her around to New York and then came into the home office of the Fleet Corporation in Philadelphia.

Q. It was before that, then, that you were with Swaze, Raymon & Page?

A. That is correct.

Q. And during what years was that?

A. I should say probably about 1915 or thereabouts.

Q. How long were you associated with that firm?

A. Not very long; some six or eight months, I believe.

Q. What character of work were you doing at that time?

A. I was working on yachts, pleasure boats.

Q. When you say yachts, what do you mean?

A. That is a pretty broad field, Mr. Evans.

Q. I know it is. I heard about a yacht the other day that was more like my idea of an ocean liner, so I want to know whether that is the kind of a yacht you were building.

A. No, these were, I should say, comparatively small boats. By that I do not mean what is ordinarily termed a motor boat.

Q. Some of them were motor boats, were they not?

A. Oh, anywhere from 50 to 150 or 200 feet in length.

Q. Small boats?

A. Comparatively.

Q. And not cargo boats at all?

A. Oh, no, not cargo boats.

Q. Have you at any time made estimates of cost for the construction of ships?

A. Yes.

Q. When?

A. Since I got into this case.

Q. That was theoretical work, was it not? I am talking about estimates of cost of ships that were to be built.

A. Yes.

Q. You understand what I mean?

A. If you mean estimates of costs of ships that are to be contracted for in the future?

Q. Yes.

A. Yes, I understand what you mean. Yes, I have made such estimates.

Q. When?

A. With respect to all these vessels that I had charge of under the Engineering Corps that I told you about.

Q. You mean the river boats that you told us about?

A. Yes.

Q. Of which the only steamboats were these towboats?

A. No, I would not say that. You mean the only vessels operated by steam?

Q. Yes; is not that a fact?

A. Dipper dredges and hydraulic dredges are also operated by steam, also drill boats.

Q. Your experience in the actual making of estimates for the construction of vessels was limited to the type of vessels with which you were dealing when you were with the Army Engineering Corps on the Mississippi?

A. That is correct; that is, for complete vessels.

Q. And with that exception you have never made any estimates for the construction of any vessels, have you?

A. With the exception that I just stated.

Q. With the exception of the work you have done in connection with this case?

A. That is right.

Q. That is to say, checking our estimates rather than making estimates?

A. All right.

Q. Am I right about that?

A. Put it that way if you like.

Q. When did you become associated with the Legal Department of the Fleet Corporation?

A. About 1926.

Q. And when were you assigned to this case?

A. I cannot tell you from memory exactly, Mr. Evans, but I should judge it was the latter part of 1927 or some time in 1928, the early part of 1928.

Q. Have you been working in cooperation with Government counsel in the preparation of this case?

A. At various times, not continuously, yes.

Q. That is what I mean. I suppose none of us worked continuously on this case, but I mean your work has been done in cooperation with Government counsel and under their supervision and direction, has it not?

A. Yes, I made investigations that they requested me to make.

Q. And your function in this case was to take Bethlehem's estimates and to criticize them, was it not?

A. One of them, yes.

Q. And for that purpose you required certain information, which was not then available in the records of the Fleet Corporation?

A. I had no way of telling whether the estimates were correct until I had some data on which to base an opinion.

Q. Naturally, and, therefore, you, through counsel, asked Bethlehem to furnish such information as

you thought you would require in order to check the accuracy of Bethlehem's estimates, did you not?

A. I cannot say whether that is entirely correct. I did ask counsel to obtain certain information. Whether all the information which counsel requested originated from my requests or not, I do not know.

Q. I am asking you whether you asked counsel to procure from Bethlehem what information you thought you would require in order to check the accuracy of Bethlehem's estimates?

A. Yes, I guess that is a fair statement.

Q. Now did you get all of the information that you asked for?

A. No, I do not think I did.

Q. Tell us what it was that you asked for that was not furnished?

A. I do not know whether I can do that offhand or not, Mr. Evans. We tried to get some information on the individual price on plates and shapes on 158 and 159, and I believe Bethlehem informed us that there was no such information available.

Q. In other words, we told you that, after making a search, the original invoices had not been preserved?

A. I think that is right, yes. Now there may have been some other similar instances. I cannot say offhand.

Q. Can you recall anything else?

A. No, I cannot say that I can, offhand.

Q. So that with that exception your recollection is that you got from Bethlehem all, or substantially all, of the information that you thought you needed in order to check the accuracy of Bethlehem's estimates?

MR. HALLETT: That is not what he said.

MR. EVANS: I am asking him whether that is not a fact.

A. No, we got from Bethlehem, so far as I know, all the information which we requested which Bethlehem said was available.

BY MR. EVANS:

Q. Well, you have told us of that one bit of information, which was not furnished because Bethlehem told you it was not available, and I asked you whether there were any other items which you asked for and which you did not get?

A. I told you that I could not specifically name any other items.

Q. All right, then, I think my question was a fairly proper one, that with the exception of the invoices for plates and shapes on 158 and 159, you got from Bethlehem all, or substantially all, of the information that you thought you needed in order to check the accuracy of their estimates; is that right?

A. No, I think that is a little too broad.

Q. All right; tell me what items you asked for and did not get.

A. I have just told you that I cannot do that.

(A discussion followed off the record).

Last two questions and answers read.

THE WITNESS: All right, I will add another item that occurred to me while this discussion was going on.

BY MR. EVANS:

Q. What is that?

A. I wanted the basis on which the 1.75 factor was developed for material other than Job 12, and I never got it.

Q. Is that all you can think of?

A. Just at the moment. I may as time goes on think of some others.

Q. You told us this morning that on hull 253 the result of Brown's having applied the same factor of increase to shapes as he did to plates resulted in an over estimate on that one item of $38,623.21; that is right, it is not?

A. No, that is not exactly correct. The $38,000 item is the combined result of applying the 2.66 factor to both plates and shapes, as compared with the factors which I developed independently for shapes and plates.

Q. That was one of the criticisms that you developed in connection with the preparation of this case some time in advance of the hearings before Mr. Roberts, was it not?

A. Yes, substantially that.

Q. And you had some time before you gave your testimony at the previous hearing all of the data that you have to-day, did you not?

A. Yes.

Q. For instance, you had had the invoices on plates and shapes for 253 for something like a year, had you not?

A. I had not had them for something like a year. They had been furnished to the Fleet Corporation and I had seen them, but I had not seen them all that time.

Q. They were available, were they not?

A. If I had asked for them I presume so, yes.

Q. In other words, they were in the office of the Fleet Corporation here in Philadelphia, or their counsel's office?

A. Wherever they kept them, yes.

Q. Well, but you had ample time to go over those invoices, and in point of fact you did go over the invoices, did you not?

A. Yes, I did.

Q. Can you explain to us why it was that in testifying before Mr. Roberts with reference to this same item, you gave him the figure of increase or over estimate at $34,863.41? In other words, there was, in round figures, a difference of $4,000 between the figures as you had developed it in the testimony before Mr. Roberts and the figure as you gave it to us here to-day?

A. Yes, I can explain that.

Q. All right, I would be glad to hear it.

A. The principal reason for that difference is that in the testimony that I gave before Mr. Roberts, I ignored the fact that the 2.66 factor was not the correct factor for plates, and I used it as Mr. Brown used it, because I did not think there was enough involved in it to be particularly material.

Q. When did you discover that error and correct it for the first time?

A. When did I discover that error?

Q. Well, you say there was an error.

A. No, I do not say there was any error at all.

Q. You say that there was an error in the figure that Mr. Brown used?

A. I beg your pardon, we were not talking about the same thing. When did I discover that error?

Q. Yes.

A. When I first started to work on these estimates, some time before the hearing before Mr. Roberts.

Q. I still do not understand why, if you had that information before you and had considered it, you

gave one figure to Mr. Roberts and you now give another figure to Mr. Mason, representing, as I understand it, the same item of error, or what you call an error.

A. Well, I will give you the whole story, then. At the time I testified before Mr. Roberts I only calculated the excess due to shapes, due to the use of the 2.66 factor as applied to shapes, and, although I knew that the 2.66 factor as applied to plates was not exactly correct, I did not think it worth while to go into that, because there was not very much involved in it. Now in determining the factor that I used for shapes at that time I ignored the influence of extras, and Mr. Wood made a great deal of the fact that I ignored that influence of extras at that time before Mr. Roberts. As a matter of fact, the reason that I ignored it was because it did not amount to anything, but, because of Mr. Wood's insistence that I had made a great mistake in ignoring that factor, I now have used that factor, and in addition I have used the exact correct factor applied to plates, and I have given you the result obtained in that way.

Q. I thought that was going to be your answer, Mr. Sanford, but you did the same thing later in your testimony before Mr. Roberts, did you not?

A. Certainly.

Q. But you did not hit the same figure that you hit here. Why was that?

A. Why was it?

Q. Yes.

A. The only thing that I did in my testimony before Mr. Roberts was to take the influence of extras upon shapes. I made no change whatever in the factor of 2.66 on plates. I let that ride as it

was. That is the reason I did not hit the figure we got here.

Q. Let us see whether your memory is quite accurate about that. First you will recall—you correct me if I am wrong—

A. You have the testimony there.

Q. That you were examined in chief by either Mr. Brown or Mr. Hallett, I do not recall, and then you were cross examined by Mr. Wood, and in the meantime there was a luncheon interval, and then at the conclusion of your cross examination there was some redirect examination by Mr. Brown or by Mr. Hallett, I do not recall. Is that in accordance with your recollection of how your testimony was given?

A. If you are taking it from the transcript, I presume that is correct, Mr. Evans.

Q. Now I am reading from the transcript at page 437.

THE MASTER: Was this before or after lunch?

MR. EVANS: After lunch.

BY MR. EVANS:

Q. "The actual factor for plates, that is, the factor of increase for plates including extras, would be 2.603, and the actual factor of increase for shapes including extras except for bulb angles—all other extras except bulb angles—would be 1.789."

Do you recall so testifying?

A. I believe that is right.

Q. And as a result of that you established your own factor instead of using Brown's factor, did you not?

A. Yes.

Q. And the factor which you established was 2.3668, was it not?

A. If that is what it gives there, it was.

Q. That is what it does give. And then you corrected the total figure which you had originally given, and said: "I testified that in connection with shapes on hulls 253 and 254 the use of a factor of 2.66 applied to shapes would produce an excess in Mr. Brown's estimate of $35,863.70"?

A. Yes.

Q. "Using a factor of 1.789 instead of 1.78, which is obtained as I have just stated, the excess produced would be $35,496.91, or a decrease from the excess previously testified to of $366.79". You recall so testifying, do you not?

A. Yes.

Q. Now I ask you why it is that, having changed your figure once in your testimony before Mr. Roberts, you still gave a figure which is substantially different from the figure that you have given here before Mr. Mason?

A. I did not. The testimony that you have read and the difference that I have recited in there is due entirely to the effect of extras on the factor for shapes, as I told you a few minutes ago, and in this excess I have given here I have also applied a different factor to plates than the 2.66 factor which Mr. Brown used, and I did not do that in the testimony which you have read to me.

Q. I see. Then in developing your criticism apparently you thought it was necessary, or at least desirable, to approach the problem in three ways, each of which gave you a different answer; is that right?

A. No, it is not right. The situation is simply this, that I approached the problem in what I thought was the simplest way. In the first place, I allowed Mr. Brown's factor of 2.66 for plates to ride because I did not think the difference was very material. I did take exception to the use of that factor as applied to shapes, and in obtaining my factors I did not make use of extras because I thought the difference on account of extras was not material. Now when Mr. Wood raised the question as to why the extras were not used, naturally I figured it on the basis of extras, to show Mr. Wood how immaterial the question of extras was, and I think I showed him. Now when we came in here this time, inasmuch as Mr. Wood has raised the question of extras, I think that I have an equal right to take exception to Mr. Brown's factor of 2.66 as applied to plates, which I did not take exception to before, at least not in so far as figuring an excess was concerned, and that is what I have done. I think it is a perfectly logical procedure.

Q. Therefore, as your testimony stands to-day, you say that, by reason of applying what you say was an improper factor on the part of materials in Job 12, Mr. Brown's material costs, or estimated material costs, on a 9100-ton tanker, were some $38,600 more than they should have been?

A. In so far as plates and shapes are concerned.

Q. Yes, as to that one item. Now you said this morning that the factor of increase on rivets, comparing the price current in November of 1917 with what we will call the base price, was less than the factor of increase on plates. That was your testimony, was it not?

A. I do not know whether I put it exactly that way. Probably that was the substantial effect.

MR. HALLETT: May I have the question read?

(Question read.)

THE WITNESS: That is not exactly correct. In the first place, I think I used December as the time, December 1917, and in the second place I did not compare it with the price of plates as of that time or any other time. I simply told you what the factor was.

BY MR. EVANS:

Q. I say, you said the factor of increase was less than the factor of increase on plates?

A. The factor of increase on plates as of what time?

Q. Well, the factor that Brown used, then?

A. Yes, less than that factor.

Q. Now in making that statement you assumed that the price on rivets in December, 1917, if that is the period you used, was $4.40, did you not?

A. Let us see. The date that you have referred to, that I had in mind, was the date that I took the start with, that is—

MR. HALLETT: I think there is a confusion here.

THE WITNESS: I think there is a confusion. I would like to straighten it out.

BY MR. EVANS:

Q. You told us that the War Industry Board's price was $4.40?

A. That is right

Q. Did you want us to understand that that price was current in December of 1917, when Bethlehem submitted their estimates?

A. I do not think I made the statement. The Master asked me whether that price was in effect in November, 1917, and I told him I would not care to say without verifying it.

Q. But if it was not in effect, what possible bearing has it got on this case, because you are comparing prices which were in effect in November or December, 1917, with some other prices, are you not?

A. Yes.

Q. All right. Now unless that rivet price in December or November of 1917 was $4.40, how can you base a factor of increase on a price of $4.40?

A. You cannot, unless that was the price.

Q. And you have assumed that that was the price?

A. I have, yes.

Q. Did you ever ask Bethlehem what the actual price on rivets was?

A. I think we did. That is one of the other things we did not get.

Q. One of the things you asked for and did not get?

MR. BROWN: We asked you a lot about rivets and never got any information about them at all. That is in the correspondence.

BY MR. EVANS:

Q. Where did you get your quotations for the price of rivets in 1916 or 1915 that you gave us?

A. As I recall, those were taken from The Iron Age.

Q. Are you familiar with a handbook that is gotten out by the American Metal Market called "Metal Statistics"?

A. I have seen such a handbook.

Q. Is it reliable?

A. I believe it is, yes.

Q. Will you tell us what was the price on rivets, according to this handbook, in November, 1917?

A. In November, 1917, as shown in this handbook, the price of rivets was $4.91.

Q. And that was f. o. b. Pittsburgh?

A. Yes.

Q. In connection with your study of this question, did you ascertain when the contract for 253 and 254 was let?

A. I have known that date. I do not recall it at this time, Mr. Evans.

Q. Would it refresh your recollection if I told you that it was in September of 1915?

A. If you say that is correct, I will accept it. I do not have any personal recollection of that date.

Q. If you had that date, and in the absence of any other information, would not that be the natural date to take in order to ascertain the return price of rivets?

A. What was the date again, please?

THE MASTER: The date when the contract was let, I understand.

THE WITNESS: Not necessarily, no.

BY MR. EVANS:

Q. You took, as I understand it, a price of rivets current at the time when the price of shapes was whatever it happened to be on 253; is that right?

A. For part of the shapes, not all. They were two different prices.

Q. Why did you take the price on shapes, or the date of a particular price on shapes, instead of the

date when you knew that the plates had been contracted for?

A. To tell you the truth, Mr. Evans, we did not know a thing about when these rivets were purchased.

Q. You knew when the plates were purchased, though, did you not?

A. No, I cannot say that we did.

MR. HALLETT: We tried to get a copy of the contract to find out when they were purchased and were not able to.

MR. EVANS: You had the contracts, did you not, for the plates?

MR. HALLETT: We did not have the contract. We asked for the contract. We had the invoices and it showed that there was a contract, but we never got the contract.

MR. ROBISON: The record before Mr. Roberts shows that they were produced and enumerated in the record before Mr. Roberts.

BY MR. EVANS:

Q. What is your recollection about that, Mr. Sanford, whether you had the contract for the plates?

A. I am not positive about whether I saw the contract or not. Naturally I knew the price at which those plates were purchased, and that fixed an approximate date in my mind as probably when they were purchased.

Q. What date does that fix?

A. Whatever date it was that corresponded with the base price of 1.15.

Q. Will you tell us when that was?

A. Not offhand, I can in a moment, if you want me to dig it up.

Q. Go ahead.

A. It was evidently about April or May of 1915.

Q. That is what I thought. Now if you had the price on rivets as of April, 1915, you would have found that it was how much? (Handing witness "Metal Statistics" Handbook)

A. $1.35.

Q. $1.35, and if you had taken it in May, 1915, you would have found it was how much?

A. $1.40.

Q. As compared with the November, 1917, price of $4.91?

A. That is right.

Q. Or a December, 1917, price of $4.65?

A. That is right.

Q. So that if you had made your comparison between prices at those dates, your factor of increase on rivets would be substantially more than 2.66, would it not?

A. I have not figured it out. Probably it would be, but I had no particular reason to take those dates.

Q. Did you have any better reason for taking any other dates?

A. Yes Mr. Wood suggested that I take the other dates in the last hearing before Mr. Roberts.

Q. Mr. Wood suggested that you take some other dates?

A. Yes.

Q. For what?

A. For the purchase of rivets.

Q. He did?

A. Yes.

Q. I suppose it would be idle for me to ask at what page of your testimony that appears.

I will ask you whether you have not read over your testimony?

A. I have, yes.

Q. How recently?

A. About three days ago, I think.

Q. Then perhaps it would not be so idle for me to ask in what part of your testimony that appears?

A. Naturally it was in the cross examination. Just where I could not say. Perhaps I could find it for you.

Q. Is this the testimony to which you refer, on page 385, or if that is not it will you see if you can refer to the part of the testimony that you have in mind?

(Witness handed transcript of testimony.)

A. Yes, this is what I had in mind.

Q. All right, will you read us from Mr. Wood's questions and your answers where it was that he suggested that you take the date of December, 1915, for purposes of comparison on rivet prices?

A. I do not say that he suggested that specific date.

Q. I understood you to say exactly that.

A. If I did, I said the wrong thing.

Q. What you really meant to say was that Mr. Wood suggested that, if you were going to make comparisons of prices on all materials that went into Job 12, you ought to take rivets into consideration; is not that right?

MR. HALLETT: Oh, no, I think you had better read the testimony.

A. Mr. Wood asked me why I did not make a comparison with respect to rivets.

MR. EVANS: Exactly.

THE WITNESS: And I told him because I did not know when the rivets were purchased, and then he said that I knew the period during which the ships were built.

BY MR. EVANS:

Q. Yes, and what did he suggest that you might do?

A. I assumed that he had the idea in mind that if I knew—

Q. What did he say? You told us it was the result of a suggestion that Mr. Wood made that you gave us a figure here to-day.

A. Mr. Wood told me that I knew the period during which the ship was built, therefore inferring that, that being so, the price of rivets in effect at that time would be a proper price to use for the purposes of comparison.

Q. So that was your reason for taking the price of December, 1915?

A. Not entirely, no. It so happened that that was the date at which a large portion of the shapes for hull 253 were purchased—I mean that was the date at which the price for these shapes was effective.

Q. But if, instead of using the price on shapes to determine the proper date, you had used the price on plates, you would have gotten an entirely different price on rivets, would you not?

A. Oh, quite so.

Q. Just to refresh your recollection, I direct your attention to page 427 of the testimony, which was during your examination before Mr. Roberts: "Mr. Brown: We call for the production of all contracts and purchase orders relating to plates and shapes

for hulls 253 and 254, and hulls 244 and 245, Fore River; and Sparrows Point hulls 158 and 159. Mr. Robison: We are producing a contract with the Carnegie Steel Company for plates and shapes for hulls 253 and 254, together with copies of certain letters modifying it." Refreshing your recollection with that, do you not now recall that we did furnish Government counsel, while you were on the stand, copies of the contracts for plates and shapes on 253 and 254, as well as 158 and 159 and 244 and 245?

A. Yes, it so appears in the transcript.

Q. And you had those contracts before you during your testimony, did you not?

A. I do not know whether I had them before me. They were there, yes.

Q. They were available to you?

A. Yes.

Q. When you came to examine the actual cost of plates and shapes for 158 and 159, you found that the base price was substantially higher than the base price for plates and shapes on 253 and 254, did you not?

A. Yes.

Q. Can you give us that in terms of percentage, approximately?

A. Well, I can tell you this way, that my recollection is that the average price of plates and shapes for 158 and 159 was 1.84 and the corresponding average for 253 was about 1.52.

Q. And therefore I think you said this morning that as the average price of plates and shapes was more in the case of 158 and 159, it was natural to assume that the average price of materials in Job

12 other than plates and shapes was higher in the same proportion than on 253 and 254; is that right?

A. Yes, I think that is a fair conclusion.

Q. So that, assuming that your assumption in that regard is correct, your conclusion would be that the actual cost of material in Job 12 on 158 and 159 was substantially higher than the actual cost of the same material on 253 and 254?

MR. HALLETT: What do you mean by actual cost?

MR. EVANS: Cost per light weight ton.

THE WITNESS: That is different.

(Question read.)

A. That would not necessarily follow. It might follow, Mr. Evans. It would depend upon the relation between the light weight tonnages of the respective ships.

BY MR. EVANS:

Q. Then I will put it this way, that the actual cost of material in Job 12 on 158 and 159 would, on your assumption, have been substantially higher per unit of material, whatever that unit may be, than the cost of the same material in Job 12 on 253 and 254; does not that necessarily follow?

A. Yes, it was.

Q. Of course it does. And therefore, if that is so with regard to the cost of materials in Job 12, it must also of necessity follow that the reverse is true as to the cost of materials other than Job 12; is not that right?

A. Not at all, no.

Q. It does not follow? Let us see if it does not. The material cost in the two ships per light weight ton was substantially the same, was it not?

A. Yes. May I look at those actual figures?

Q. Certainly.

A. It was substantially the same with respect to 253 and 158 per light weight ton on the basis of the correct material weight.

BY MR. HALLETT:

Q. But not on the figures that were before Mr. Brown?

A. Exactly.

BY MR. EVANS:

Q. Now then, if you assume that the cost of the materials in Job 12 was more on 158 than on 253, then it must necessarily follow that the cost of materials other than Job 12 was less on 158 than it was on 253?

A. No.

Q. Why not?

A. Because that would depend entirely upon the relationship between Job 12 and the other material, which is not the same in the two cases.

Q. Now let me read your answer to that same statement when it was put to you before Mr. Roberts and see whether we can make some progress that way. You were asked at page 390:

"Q. If the material cost per light weight ton had been the same on both ships, then it would have been perfectly appropriate for Mr. Brown to have used the composite material factor to the whole material cost of 158 and 159, wouldn't it?

A. Do you mean to ask me if it would be proper to use a single factor?

Q. If the material cost per light weight ton was the same on both ships.

A. That would not necessarily follow, no.

Q. They were built during the same period?

A. Approximately, I couldn't say exactly.

Q. If the material cost per light weight ton was the same on both ships, and it developed that the cost of material entering into Job 12 or the cost of the steel was higher than on 253, then the cost of the material entering into the ship other than steel was lower than on 253, wasn't it?

A. It might have been, depending upon the—

Q. It must have been, mustn't it? If your average is the same for all the material that goes into the ship, but the cost of steel per ton was higher on 158 than on 253, then the average cost per ton of the remainder of the material in the ship must have been lower on 158 than on 253?

A. Quite true."

Now that is what you said the last time, isn't it?

A. Yes.

Q. Is that the same question that I have asked you just now?

A. Yes.

Q. And is your answer the same as it was before?

A. No.

Q. Why have you changed your answer?

A. Because the answer that I gave you the last time was a snap judgment that you pressed me to, or rather Mr. Wood did, and on mature reflection I am convinced it was wrong.

Q. Did you correct it at any time in your testimony before Mr. Roberts?

A. I don't recall that I did, no.

Q. You had plenty of opportunity to correct it, didn't you?

A. Well that would depend entirely on when that statement was made. I don't recall.

Q. It appears at page 391 of your testimony and the hearings continued for some considerable time after that, didn't they?

A. I don't know, you haven't given me the dates.

Q. Well we will give you the date. Your testimony to which I have just referred you was given on May 27th. Will you accept that as correct?

A. Yes, if you say so.

Q. Whereas, according to the record, the proceeding before Mr. Roberts was not closed, that is the taking of testimony was not closed until June 21, 1929. So that if you had made a mis-statement in your testimony you certainly had ample opportunity to correct it, hadn't you?

A. As far as point of time was concerned, yes. I was not here all of the time. Are you positive that I did not correct it before Mr. Roberts?

Q. Now I don't want to be positive about anything in this case?

A. Well I simply am asking for information.

Q. And I am asking you whether you have any recollection of correcting it and I will say to you for what it is worth that I have read your testimony over and I am pretty positive that you never did correct it. On the contrary, you repeated it.

A. Well I don't think that I repeated it. I do think that I gave some additional testimony, not directed exactly toward that same question but which, as a matter of fact, was fundamentally the same proposition.

Q. Let us see if you did not repeat it. Mr. Roberts asked you substantially the same question and I am reading now from page 396:

"What he is getting at is, if he allowed at the rate of 266 instead of 189 increase for Job 12,

if it is a fact that those two cost about the same per light weight ton, he would allow too much because he would get his light weight tonnage out of balance.

THE WITNESS: That is right.

BY MR. WOOD:

Q. You would allow too little for material other than on Job 12 to maintain your balance. If you are going to reduce the factor for Job 12 to 189".

And that is what you did, isn't it?

A. Yes.

"Q. Then on the basis of the actual cost per light weight ton, you have to increase your factor of 175 that is applicable to the remainder of the material.

A. If you are going to keep the same total material cost per light weight ton."

Is that correct? I mean did you so testify?

A. Yes, I so testified.

Q. And now you want to change your answer?

A. I do.

THE MASTER: May we have why?

MR. EVANS: If the witness wants to tell us why I have no objection.

THE WITNESS: Mr. Evans asked me if it was necessarily true that the cost per light weight ton, assuming first that the material costs were approximately the same per light weight ton, if the cost of the light weight ton of the Job 12 material was substantially more in the cost of Hull 158 than in the cost of 153, that that being so, it must necessarily be true

that the material other than Job 12 in 158 must be at a less price than 253 in order to maintain a balance. Have I stated it correctly?

MR. EVANS: That is it exactly.

THE WITNESS: It is not necessarily so unless the relations between Job 12 and other material in the two cases are identical.

BY THE MASTER:

Q. You mean in quantity?

A. No, proportion. For example, in the one case Job 12 is a certain proportion of the total material and if in the other case Job 12 was the same proportion that would be true, but it is not necessarily true unless that is a fact.

BY MR. EVANS:

Q. Did you make any study to determine whether the proportion of material in Job 12 to material other than Job 12 was or was not the same in the two boats?

A. If you take the material in Job 12 in both cases, that is Hull 253 and Hull 158, and adjust them to the same unit cost, you will find that the proportion in Job 12 in both cases is approximately the same. That means this, that the excess in Job 12 on Hull 158 is due almost entirely to the increased cost of steel in that job, and that being so, the other material other than Job 12 apparently would be on very nearly the same basic prices.

Q. On 253?

A. Yes.

Q. You have said, if I understand your statement, that the proportion, and by that I suppose you mean the proportion in weight of material in Job 12?

A. No, not in weight, in cost.

Q. Proportion in cost?

A. Sure, we are talking about costs, aren't we?

Q. Well I don't know whether you are talking of costs or whether you are talking about weight. I am trying to find out.

A. Sure we are talking about cost per light weight ton, as I understand it.

Q. Now you say that if the proportion of materials in Job 12 to the total of material in the entire vessel is the same on the two vessels then if your cost of the material in Job 12 is higher on one boat than on the other but your total material cost is the same it would follow, as you said in your testimony before Mr. Roberts, that the cost of material other than Job 12 must be lower?

A. Yes, that is right in that particular case.

Q. And if I understood your statement you said that was the particular case in this particular comparison?

A. When did I say that.

Q. Well, that is what you just said.

A. Just now, you mean?

Q. Yes, just now.

A. No, I didn't say that. I particularly said that in this particular case, the proportion in the total of material in Hull 158 was more than it was in the total material of 253, and the reason for that difference primarily is due to the fact that the unit price of material in Job 12 on Hull 158 is different than the unit price of material in Job 12 on 253.

Q. And then the total material cost is about the same on the two jobs?

A. Yes.

BY THE MASTER:

Q. As I understand it, by reason of your exper-

ience and general familiarity with the shipping industry, you would now regard yourself, and others would regard you, as competent to estimate the cost of constructing vessels similar to those we have under consideration here?

A. I would so regard myself.

Q. And others would so regard you?

A. I hope so.

Q. If I were to ask you whether you could make for me an estimate of the proper contract price for a type of tanker talked of here as No. 140, would you feel that you could do that for me?

A. Yes. There would be two different ways to get at that.

Q. Would it be a difficult thing for you to do?

A. It would be quite a tedious job unless I had data available as to the previous cost of similar vessels or somewhat similar vessels, that is if I had to start from the beginning and knew it would be a long, tedious task.

Q. Now, with your experience, you would be able to do that thing now?

A. Yes.

Q. And that is because of your general familiarity with that type of boat?

A. With most any type of boat. I, for years, was the head of the estimating department, so to speak, of the Fleet Corporation, in which we reviewed and made counter-estimates to estimates submitted by every shipyard in the country.

Q. When did that begin?

A. That began rather early in the game, but my contact was not at that time. My contact with that was first in 1921 and from then on.

Q. When did that practice begin in the Fleet Corporation?

A. This was not with respect to contract prices but with respect to estimates for changes submitted by the various builders. The practice began in the Fleet Corporation, I should say, in 1918, although it was not thoroughly organized until the following year.

Q. And who had charge of that work when you first knew of it in 1918?

A. I cannot say who had charge of it at the very beginning. I have a man's name in mind that escapes me right now, but some time later it was taken in charge by a man by the name of Yomans and I later succeeded Mr. Yomans.

Q. And what was the method that you adopted for the Fleet Corporation when you first undertook to check estimates for the building of ships, and how did you do it?

A. This was not for the building of ships.

Q. I understand you were estimating for changes and now I am asking you whether you also checked the estimated cost of the building of ships for the Fleet Corporation?

A. No, we had no occasion to do that because at that time all the contracts had been entered into and the prices established and there was no occasion to check the total cost.

Q. Well, would the method be different in estimating the cost of changes than in estimating the cost of the total ship?

A. No, the method is substantially the same.

Q. And the sources of information would be substantially the same?

A. Yes.

Q. Well, to put a hypothetical case, assuming that instead of merely estimating the cost of changes you had been estimating the cost of a completed ship at such time, what would you have done?

A. Well, we would have first ascertained what data we had available on a ship of that type or similar type, and after we had that data available or any cost data of a similar vessel for a rough estimate we would do substantially what Mr. Brown did, assume and evaluate the factor of increase on the different elements going to make up the total cost of the ship and in that way arrive at a total cost. Now if we did not have that data available we would then have to take the detailed plans and specifications and take off bills of material and in detail figure the weights and then the costs of all the material going into the ship, and also make up an estimate for labor, and having obtained our material and labor, apply the proper overhead percentages to it and any items for any contingencies that might be thought proper.

Q. And were the records of the Shipyards in the country, during 1917 and 1918, available to the Fleet Corporation for that information, do you happen to know?

A. Not generally, no. What data and information we had of that character had been accumulated in the office of the Fleet Corporation from various sources; but we could not go into a shipyard, and not only could not but did not have the time to go into a shipyard and ask them how they arrived at the cost of this, the cost of that or something else, unless we got into a dispute with them as to the cost of a particular item of change they had submitted, and then we might ask them to substantiate that item and their

costs, and we might even prepare and did often prepare a counter-estimate which we would ask them to accept.

Q. So with that data it would be necessary for you to take your specifications and build up from those, from the items that entered into them?

A. Yes.

BY MR. HALLETT:

Q. But I understand you are describing the situation as you knew it for 1918 at least, or 1919?

A. Yes, not prior to that time.

Q. And you did not know the situation that existed in 1917 and 1918?

A. I was not in the home office at that time.

BY THE MASTER:

Q. I understand that and I think the record shows that Mr. Sanford was not in the position to do these things for the Fleet Corporation at that time, but even in 1917 records were available at some place or other throughout the country for general types of ships?

A. In the shipyards, yes, that is in those shipyards which were well established. Possibly not in the new ones.

Q. Were there any tabulations of costs kept by any organized Marine group, such as Naval Architects or Marine Architects or any tabulating association, giving costs of vessels? Did Lloyds keep such a cost?

A. So far as I know, and I may be mistaken on this, Lloyds do not keep such a cost. People who are in the business of appraising vessels naturally keep a record of all sales of vessels so that they have a basis for appraisals, and some few magazines have

from time to time published schedules of sales of vessels and such information is very difficult to get.

BY MR. HALLETT:

Q. You built up yourself, did you not, a schedule of certain changes and extras that you used, after you had an opportunity to do it, as a rough graph?

A. Well we had occasion to review and pass a number of changes and extras and after we had reviewed a number of the same type I got very familiar with it and we could tell with very little trouble whether an estimate was out of line or not based on our previous experience.

BY THE MASTER:

Q. Of course, in time, after you got enough changes of different characters, you would pretty nearly have the change of the whole boat so that you would have the whole thing there?

A. Well that would depend.

MR. BROWN: I offer in evidence the testimony of Mr. G. S. Radford which was given at the previous proceeding before Mr. Roberts, upon the ground that he is out of the jurisdiction and with the expectation that I expect to call Mr. Radford in rebuttal and expect to have him present in order that the Master may have the benefit of his attendance.

MR. EVANS: We will not make any objection to the offer of Mr. Radford's testimony upon the ground that he is not beyond the service of a subpoena but we will object to the offer of his testimony if he is going to be called to testify in person. It is either one thing or the other.

THE MASTER: Then, as I understand it, the testimony taken before the Master, in the

person of Mr. Roberts, is now offered as a part of the Government's case in chief and to be withdrawn if Mr. Radford can be induced by subpoena or otherwise to attend in person?

MR. BROWN: Yes, that is what I want. I do not want both of them in.

MR. EVANS: There is no objection to that.

THE MASTER: It is admitted, subject to the understanding that in the event that Mr. Radford can be and is called it will be withdrawn.

MR. BROWN: There were one or two admissions in the previous proceeding which I think should go in and one relates to Mr. Schwab's stock interest in either one or two of the Bethlehem companies, which I think appears at page 429. Incidentally this is because I understand that our friends would like, if possible to avoid the necessity of calling Mr. Schwab for examination at the present trial. If Mr. Schwab was expected to be called I would wait and ask him about this matter at that time, but I am not going to insist on their calling Mr. Schwab and they may offer his testimony. At page 429 it states:

"It is conceded that Mr. Schwab's holdings of voting stock in Bethlehem Steel Corporation in 1917 ranged from 33 per cent. of the total voting stock outstanding on April 2nd, 1917, to 37.1 per cent. thereof on October 1, 1917, and that during 1918 his holdings of voting stock in the Bethlehem Steel Corporation arose from a minimum of 21 percent. in January 2, 1918, to a maximum of 27.5 per cent. on April 1st, 1918, and that his holdings of said stock for the bal-

ance of that year were approximately 27.5 per cent. of the voting stock."

Then we also offer the admission at page 736 of the previous proceeding to the effect that:

"During 1917 and 1918 Charles M. Schwab was the largest individual stockholder of the Bethlehem Steel Corporation."

I think it probably should be noted on the record that we offer all agreements of counsel which appear in the record of the previous proceeding which may perhaps have been omitted thus far in our reference to the proceedings. I do not know whether there were any others than we have already introduced but I presume if there were both sides would like to have them in.

MR. WOOD: I think we are willing to say any agreement we made before we will certainly stand by now, whether it is a part of the record or not.

MR. BROWN: I would like to offer for the purpose of having into this record notes of the previous testimony starting at the middle of page 283, as follows:

"Mr. Brown: We offer in evidence a letter dated February 7, 1918, addressed by the Purchasing Agent of the Bethlehem Shipbuilding Corporation, Limited, to the Emergency Fleet Corporation, together with an enclosure therein referred to. It is agreed subject to correction by counsel for the Government that the Western mill referred to in this letter is not a mill owned or operated by any of the Bethlehem Companies.

Mr. Roberts: The letter and enclosure are referred in evidence as G-161.

Mr. Brown: It is agreed between counsel for Bethlehem and counsel for the Government that the ships known as Hulls Nos. 150, 151, 153 and 170 referred to in correspondence which has been offered in evidence became the subject of contract No. 191, a copy of which is attached to the pleadings and is a part of the evidence in this case.

It is also agreed that the ships known as Hulls Nos. 215 and 216 referred to in Exhibit G-122 at page 272 of the Concession of Documentary Evidence likewise became the subject of contract number 230.

It is also agreed that the 11,800 ton cargo vessels to be constructed at the Union Plant and referred to in Exhibit G-132 at page 388 of the Concession of Documentary Evidence became the subject of contract number 301. Is that right?

Mr. Wood: That is right.

Mr. Brown: It is also agreed that the three cargo vessels of about 7400 tons to be constructed at the Harlan plant and referred to in Exhibit G-109, at page 225 of the Concession of Documentary Evidence, became the subject of contract 178.

Mr. Wood: That is right.

Mr. Robison: In part.

Mr. Brown: Became the subject in part of contract No. 178.

Mr. Wood: The three tankers that are in that contract were referred to in the same letter.

Mr. Brown: It is also agreed that the three tanker vessels of about 7500 tons referred to in Exhibit G-109 to be constructed at the Harlan plant also became the subject in part of contract number 178.

It is agreed that Sparrows Point hull 176 referred to in Exhibit G-112, at page 233 of the Concession of Documentary Evidence became the subject of contract No. 196.

It is agreed that the five tank vessels of about 10,100 tons, to be constructed at the Union plant and referred to in Exhibit G-109 at page 224 of the Concession of Documentary Evidence became in part the subject matter of contract 177, and that subsequent to the date of said Exhibit the number of said tankers was increased from 5 to 12, said increase being in pursuance of Exhibit G-121, appearing at page 271 of the Concession of Documentary Evidence. Is that right?

Mr. Wood: That is right.

Mr. Brown: It is agreed that the three tank vessels of about 10,100 tons to be constructed at Sparrows Point plant and referred to in Exhibit G-109, at page 224 of the Concession of Documentary Evidence became the subject matter of contract No. 179.

It is agreed that the three tank vessels of about 9100 tons, to be built at the Fore River plant and referred to in Exhibit G-109 at page 225 of the Concession of Documentary Evidence became the subject matter of contract 183.

It is agreed that the six 10,100 ton tankers to be built at the Union plant and referred to

in Exhibit G-132 at page 388 of the Concession of Documentary Evidence became the subject matter of contract 301. Is that all right?

Mr. Wood: Yes, there were six cargo boats in that one.

Mr. Brown: They have already been in.

Mr. Wood: That is right.

Mr. Brown: It is agreed that the four 10,100 ton tankers and three 7400 ton cargo vessels to be constructed at the Sparrows Point plant and referred to in Exhibit G-127, at page 342 of the Concession of Documentary Evidence became the subject matter of contract No. 226.

It is agreed that the three 10,100 ton tankers to be constructed at the Sparrows Point plant and referred to in Exhibit G-132, at page 387 of the Concession of Documentary Evidence became the subject matter of contract No. 300.

It is agreed that the three tankers of about 9100 tons, to be constructed at the Fore River plant and referred to in Exhibit G-132 at page 386 of the Concession of Documentary Evidence became the subject matter of contract number 299.

It is agreed that the three 7500 ton tankers and seven 5100 ton cargo vessels to be constructed at the Harlan plant referred to in Exhibit G-132 at page 387 of the Concession of Documentary Evidence became the subject matter of contract 314.

It is also agreed that the tugs referred to in Exhibit G-109 became the subject matter of contract 184."

It being understood that the Government has

a right hereafter to offer in evidence any exhibits which it may see fit to do, there is only one other document we have to offer now, and the exhibit I refer to is the Exhibit previously offered as Exhibit G-160 which appears at page 492 of the Concessions of Documentary evidence, and with respect to that Exhibit there was an agreement of counsel which appears at page 281 of the previous proceeding and which I presume there is no objection on the part of Bethlehem counsel to making with respect to the same exhibit at this time. The agreement or admission that is referred to which appears at pages 281 and 282 of the previous meeting reads as follows:

"Mr. Brown: With respect to the letter of October 2, 1918, which has been offered in evidence as Exhibit G-160, it is conceded by counsel for Bethlehem that at the time this letter was written Edward N. Hurley was chairman of the Shipping Board; that Mr. Farr referred to in the letter was President of the American Shipbuilding Company; that the contracts of the American Shipbuilding Company referred to in this letter were contracts between it and the Fleet Corporation in the sense that they were executed by the Fleet Corporation; that Cuthell referred to in the letter of October 2, 1918 was at that time general counsel for the Fleet Corporation and had been either assistant general counsel or general counsel during the period between November, 1917 and January 1, 1919; and that in stating in said letter that Schwab was acting on Cuthell's advice,

the advice referred to was that no matter what prices were designated in the Shipbuilding contracts executed by the Fleet Corporation, the Fleet Corporation had the legal right to subsequently adjust such prices so that they should afford only just compensation to the ship builder."

I assume the same agreement may be noted at the present time?

MR. WOOD: That is right.

EVIDENCE ON BEHALF OF BETHLEHEM

JOSEPH W. POWELL, having been duly sworn, was examined and testified as follows:

BY MR. EVANS:

Q. What is your present business?

A. President of United Dry Docks Incorporated.

Q. Where is your place of business now?

A. 11 Broadway, New York.

Q. What does the United Drydocks Company do?

A. Builds and repairs ships.

Q. So you are still in the shipbuilding game?

A. Yes, sir.

Q. You are, however, no longer connected with the Bethlehem Shipbuilding Company or with the Fore River Shipbuilding Company?

A. No.

Q. Or with the Bethlehem Steel Company?

A. No.

Q. When did you sever your connection with Bethlehem?

A. My actual connection was severed in December, 1920, although I maintained some connection for some little time. I think I finally retired in April, 1921, from the office of Bethlehem Shipbuilding Corporation Limited, and, through an oversight, I remained as president of the Fore River Shipbuilding Company, which was a dormant company, for several years.

Q. But, so far as any actual participation in the business of Bethlehem Shipbuilding Company, that terminated in December, 1920?

A. Practically, yes.

Q. You do have, however, some small financial interest in the outcome of this case?

A. Yes, at the time of severing my connection with Bethlehem it was arranged with Mr. Grace that I was to participate in seven-tenths of one per cent. of the profits that accrued on Emergency Fleet contracts except contracts on troop ships which were on a different arrangement.

Q. And that was part of the arrangement relative to the adjustment of the salary and bonus and so forth while you had been with the company?

A. Yes.

Q. What position, if any, did Mr. Schwab hold with the Fore River Shipbuilding Company?

A. He had no official position with the Fore River Shipbuilding Company.

Q. What position, if any, did he have with the Bethlehem Shipbuilding Corporation?

A. He had no official position with Bethlehem Shipbuilding Corporation.

Q. While you were connected with the Fore

River Company and later with Bethlehem Shipbuilding Corporation, to what extent, if any, did Mr. Schwab interfere in the conduct of the business of these corporations?

A. He never took any part at all in the conduct of the corporations.

Q. What experience did he have in shipbuilding?

A. He had no experience in shipbuilding.

Q. Was it your practice to consult Mr. Schwab regarding the submission of estimates of ships that you were contracting to build?

A. Never.

Q. I am speaking now of the time prior to the date when he became Director General of the Fleet Corporation?

A. That applies both to the time prior to his connection and afterwards.

Q. In 1918 he became Director General of the Fleet Corporation, did he not?

A. Yes.

Q. Do you recall the date?

A. It was in April, 1918.

Q. How long did he continue in that position?

A. Until some date between the Armistice, the 11th of November, 1918, and Christmas.

Q. During that time you were having negotiations with representatives of the Fleet Corporation, both regarding contracts for additional ships and also regarding matters that were coming up from time to time in connection with ships for which you had already contracted. Am I correct in that statement?

A. Yes.

Q. In connection with any of these matters, did you deal with Mr. Schwab at all?

A. Never.

Q. With what representatives of the Fleet Corporation did you deal?

A. With pretty much everybody else in positions of authority. With Mr. Piez, Mr. Radford, Admiral Bowles, Mr. Cox, Mr. Kinley, Mr. Kuehnle, Mr. Cuthell, Mr. White, Mr. Stern, and probably a lot whom I have forgotten.

Q. During that time did you consult with Mr. Schwab about any of your shipbuilding problems or contracts?

A. Never. The only occasion on which I have any recollection of referring to the shipbuilding program was at the time probably in May, 1918, or June, when the Fleet Corporation was considering the building of additional troops Mr. Schwab said to me one day that they would require more troop ships and that it would be up to Bethlehem to build them and it would be up to me to take the matter up with the other officers of the corporation.

Q. Did you at any time discuss with Mr. Schwab prices?

A. Never.

Q. Or estimates?

A. Never.

Q. During that period did Mr. Schwab have anything whatever to do with the Bethlehem yards?

A. No, he had nothing whatever to do with them. In fact he rather ignored us, as I think I said when I testified before, and I could with great difficulty even get him to come to our yards to talk to our men, a service he was performing for all of the other shipyards.

Q. You mean talking to them in a 4th of July spirit?

A. Yes.

Q. Boosting up the morale of the forces?

A. Boosting the morale.

Q. That was the job that he was principally undertaking to do for the Fleet Corporation, was it?

A. That was one of the principal jobs and he did a successful job at it too.

Q. Would you say that Mr. Schwab was competent to either estimate or criticise estimates of cost in estimates?

A. No, I should not.

Q. Had he any experience whatever in that respect?

A. None whatever.

Q. Down to the time that Mr. Schwab gave up the position of Director General of the Fleet Corporation and severed his connection entirely with the Fleet Corporation, had you completed any of the contract ships?

A. No, sir.

Q. Was there any way at that time of telling or foretelling with any degree of accuracy what any of these ships would cost?

A. No. They were not near enough completed and the cost records were in such shape that it was absolutely impossible to tell what the ultimate results would be.

Q. So that at that time any forecast as to whether Bethlehem would or would not make anything under the Half-savings provision of the contract was nothing more than a guess?

A. That is a correct statement.

Q. Will you tell us something about your training and experience as a shipbuilder?

A. I entered the Naval Academy in 1893, grad-

uated in 1897. After a few months at sea I returned to the academy to pursue a post graduate course in naval architecture. When the Spanish American war broke out I went to sea and served on the New York through the duration of the war. I returned to this post graduate course after the war in 1898 and continued the course at the Naval Academy, until the Fall, until October, 1899, when I was sent to the University of Glasgow to complete my education as a naval architect. I graduated at the University of Glasgow the next Spring and returned to the United States and went on duty at the Brooklyn Navy Yard as General Assistant to the Naval Constructor, who was the late Admiral F. T. Bowles. I was ordered from the New York Navy Yard to the William Cramp & Sons Ship & Engine Building Company, in Philadelphia, in July, 1902, and acted as Assistant Naval Constructor and practically in charge of the shipbuildings for the Navy at that plant through most of the period until 1906. In 1906, July, I resigned to accept the position of Assistant to the President of the William Cramp & Sons Ship & Engine Building Company and remained in that position until May, 1914, when I became president of the Fore River Shipbuilding Company of Quincy, Massachusetts. In 1917, in August, it was determined to consolidate the various shipbuilding properties that belonged to Bethlehem, and this consolidation was completed and went into effect about October 1st, 1917. I was put in charge of the manufacturing and sale, so far as Bethlehem Shipbuilding Corporation was concerned, with headquarters at Bethlehem, Pa. The Bethlehem yards comprised the Fore River Yard, the old Crescent Shipbuilding Company of Elizabethport, known

then as Samuel Moore & Sons, the Harlan & Hollingsworth Company at Wilmington, Delaware, the Sparrows Point Plant of the Maryland Steel Company at Sparrows Point, Maryland, the Protrara and Alameda works at the Union Shipyard at San Francisco. I remained as vice-president and operating head of Bethlehem Shipbuilding Corporation until the end of December, 1920. In the Fall of 1921 I went to Washington with the United States Shipping Board, about the 4th of September, and became president of the Emergency Fleet Corporation a few weeks later and remained in that capacity until the 4th of March, 1922. I engaged in various private businesses from that time until about three years ago when I was instrumental in organizing the United Drydocks and upon its giving business I acted as Chairman of the Executive Committee and then later the presidency and have been actively engaged since that time.

Q. I suppose it is fair to say that as the result of your experience you had some familiarity at least with the problems confronting a man attempting to estimate a cost of ships to be constructed?

A. I should think that was a fair statement.

Q. I want to go back for a moment as to clear up a statement as to which I may have led you in error. It appears from one of the Exhibits which has been offered in evidence, that, in point of fact, there were four of the contract ships which were completed on or about September 27th, 1918. They were Hulls 150, 151 and 153 under contract 191, and they are what we have called the Union stock ships, are they not?

A. Yes.

Q. And also Hull 176 under contract 196 at Spar-

rows Point, that is what has been called the Sparrows Point stock ship?

A. Yes.

Q. Can you tell us whether even on these vessels, which apparently had been completed prior to the dates when Mr. Schwab gave up his position as Director General of the Fleet Corporation, that you had your so-called returned costs of those ships, or final costs?

A. I am quite clear that we did not have and that I had no knowledge of the probable saving on any of the contracts at the time I left Bethlehem.

Q. The amount of saving was dependent, of course, among other things, upon the determination of the so-called base wage rate?

A. Yes. Of course those contracts were not necessarily indicative of the later contracts anyhow, because they had been taken over in varying stages of completion.

Q. I understand that, but even as to those particular contracts, or as to those particular boats under those contracts, because I observe that under contracts 191 there were four boats, were there not?

A. Yes.

Q. Three of which were completed during 1918 and the fourth was not completed until May 8th, 1919?

A. Yes.

Q. Now even as to those boats which had actually been completed in 1918, can you tell us whether you had at that time or at any time during Mr. Schwab's connection with the Fleet Corporation any information as to what the savings would be on these contracts?

A. We had no figures upon which a reasonable

judgment could have been based as to what the savings would be.

Q. Do you recall whether at that time there had been any determination of the question of the proper base wage rate to be used as applied to the provision of the contract for increases?

A. No, I do not, but we were in a continual tangle with the Emergency Fleet Corporation as to what would be allowed as cost and what would not, and there were many questions unsettled, so that even if the ships had been finished, if the last of the ships had been finished, we still would not have known with any degree of definiteness what our savings would be.

Q. Do you recall when it was approximately that you were first told that the Shipping Board or the Fleet Corporation would expect Bethlehem to construct additional vessels, by which I mean vessels in addition to the ships under construction which had been requisitioned under the August requisition order?

A. No, I cannot give you any definite date. There were various conversations with various people, so that we knew for quite some period before matters came to a definite issue that we would be called on to handle additional tonnage.

Q. Do you recall a conference which you had with representatives of the Fleet Corporation on December 12, 1917?

A. Yes.

Q. Did you keep a diary during this period?

A. Yes.

Q. Have you got your diary with you?

A. Yes.

Q. I guess it is hardly necessary for me to ask

but will you state whether during this period you were a pretty busy man?

A. Yes, I was a pretty busy man.

Q. Did you serve very long at any one place?

A. Not very long.

Q. You did a good deal of traveling?

A. A great deal.

Q. Will you refer to your diary and see whether you find there any reference to this meeting that you had with representatives of the Fleet Corporation on December 12, 1917?

A. Yes.

BY MR. BROWN:

Q. Mr. Powell, would you explain to me the general nature of the diary? I never looked at your diary, as you know, but if you could explain what your intention was in connection with the diary, whether to note items of importance in a business way that had occurred during the day, or just what the purpose was in keeping the diary, I would be glad to have it?

A. Well, ever since 1906 I have made it a point to jot down at the end of the day, or the day following, where I was, and any items that would seem to me at the moment to be of interest. Sometimes, if I had time or matters were important, I went into more detail than at other times, but it has been generally with a view of briefly summarizing important facts that I might at some future time want to refer to.

Q. The important events which had occurred during the day?

A. Exactly.

BY MR. EVANS:

Q. Will you refer to the diary under date of December 12, 1917?

A. Yes, my diary reads: "Arrived Washington, 8 o'clock. Willard. Appointment, Harris 10:30. Saw him and he told me who to see. Also saw Hurley who said he wanted quick action and no transports. Saw Radford and went over a situation and outlined procedure. Had conference with Radford in P. M. With Brown present. At hotel all evening working."

Q. Who was Harris, to whom you referred in your diary?

A. The Harris to whom this diary refers was Rear Admiral Harris, a Civil Engineer in the Navy who was at that time acting as general manager of the Emergency Fleet Corporation.

Q. Who was Mr. Hurley referred to?

A. Mr. Hurley was Mr. Edward Hurley, the chairman of the United States Shipping Board.

Q. The Radford, I suppose is the Radford who has been referred to heretofore in this case?

A. Yes.

Q. And Brown is Harry Brown?

A. Brown is Harry Brown.

Q. Can you tell us whether Mr. Piez was at that time connected with the Fleet Corporation?

A. Yes, he was, I should say just immediately after his connection. It was within a very few days one way or the other.

Q. Can you tell us whether it was on that occasion, namely, on December 12, 1917, that you were first informed that Bethlehem would be expected to take on additional tonnage or whether you had been told that previously?

A. Well, I cannot state any definite occasion on which we had been told previous to that meeting that we would be expected to take on additional tonnage. I had been so informed by various people in con-

nection with the Fleet Corporation. I would like to add that my first meeting with Mr. Piez after he joined the Shipping Board was on the 28th of November, so that he was at that time vice president of the Emergency Fleet Corporation.

Q. Now, referring to the information that you had received prior to this conference of December 12, had you been told how many vessels Bethlehem would be expected to undertake?

A. No.

Q. And I suppose, of course, you had not been told the particular sizes or types of vessels?

A. No, I should say not, but we had a very definite idea that we were going to be required to take as many as we could of the type of ships that had not been let to other shipbuilders and that we knew would be necessary to complete the program that the Fleet Corporation had in mind. By that I mean tankers, troops' ships and the type of ship that required shipbuilding experience and that could not be built in the yards that had grown up over night.

Q. Is that the type of work that you wanted?

A. No, that was not the type of work that we wanted.

Q. And you had some reason to believe, either from what was told you or from your knowledge of conditions, that, regardless of what you wanted, that was what you were going to get?

A. Exactly.

Q. Now, following that conference of December 12th, you wrote a letter to the Fleet Corporation stating what additional tonnage Bethlehem was prepared to undertake. Is that correct?

A. Yes.

Q. That is the letter which has been offered in

evidence as G-104, to which I call your attention. Am I correct that that is your letter?

A. Yes.

Q. In this letter you say, "Because of the unprecedent conditions surrounding the labor and material market, it is impracticable to estimate within a reasonable percentage what would be the actual cost of construction, and it is therefore impossible to submit fixed prices for any of these vessels except upon a basis so far above estimated cost that any figure acceptable to this company would not be acceptable to the Emergency Fleet Corporation. It is proposed, however, that they be constructed on the basis of actual cost plus a fee, with an agreed upon probable cost, this company to be paid, in addition to the fee, one-half of any savings that may be made below this cost figure, and with the further provision that the estimated cost figure will be increased due to any increase in rates of wages that may be approved by the Emergency Fleet Corporation."

Now the form of contract which you suggested in that letter is what is commonly referred to as the cost plus fee plus half-savings form of contract, isn't it?

A. It can be referred to in that way.

Q. Had you had experience with that form of contract in shipbuilding?

A. We had completed negotiations with the Navy Department for building a large number of Destroyers under that form of contract just prior to the date in question.

Q. Prior to that, under what form of contract had you been working with the Navy?

A. Immediately prior to that, that is between the time when War broke out and September, 1917,

we had been working on a cost plus ten per cent. profit contract.

Q. Straight cost plus?

A. Straight cost plus.

Q. And was that the result of a modification that had been made in contracts which were previously on a lump sum basis?

A. Partially. We took a contract for six Destroyers from the Navy Department in the early Fall of 1916 on a fixed price basis. When the War broke out the Navy Department naturally wanted us to use every endeavor to complete the ships as soon as possible and conditions had gotten very unstable and the Secretary of the Navy, at my request, changed the form of contract cost plus 10 per cent., so that the Navy Department would be perfectly free to order us to do what they pleased without bankrupting us on account of the fixed price on those contracts. Then they later awarded us two other lots of Destroyers until we had a total of 26 altogether at Fore River, and all of those boats were awarded on the straight cost plus basis. Also they gave us a contract for the armored cruiser, afterwards the Lexington on the same basis.

Q. What was your experience with other cost plus contracts, so far as the morale and the efficiency of plants were concerned?

A. I found that it was completely demoralizing; that the more a ship cost the more money the company made very rapidly permeated the whole organization and that it was extremely bad for discipline and management to attempt to work on that basis.

Q. Would that extend down even to the foremen in the plants?

A. Extended all the way down to the workmen in the plants.

Q. And was that a situation which was difficult to control?

A. Just could not be controlled.

Q. And what was the effect of that condition upon your cost?

A. It would increase the costs, very, very materially.

Q. How about the time of completion?

A. Well, it was bad in every way. It would have taken longer to do the work because nobody cared.

Q. Do you know whether Mr. Piez was familiar with this type of contract which I call the cost plus fee plus half-savings contract?

A. Yes, I know that he was.

Q. Do you know whether you ever discussed that form of contract with him prior to the proposal of December 13, addressed to the Fleet Corporation?

A. I cannot state definitely that I did, although I am sure that I did.

Q. Can you say whether Mr. Piez was in favor of that form of contract under the conditions which existed at that date?

A. Yes.

Q. Did that form of contract give you any control over the situation which disturbed you in the straight cost plus contract?

A. It certainly did.

Q. In what way?

A. As soon as we contracted on the basis of a fee, with a percentage of the saving, proper cost figured greatly in it, one that gave us a reasonable chance to make a saving, and there was exactly the same management to cheapen the work that there

had been on the fixed price basis; perhaps not to the same extent, but to a sufficient extent so that the point of view immediately changed and the management was working for itself and not with a view to making the most money by doing the least efficient work.

Q. When you refer to the management are you speaking of the executive officers of the company?

A. The executive officers and the foreman.

Q. How did it affect the foreman?

A. Just as it affected everybody else that came in contact with it. The foremen, if they are good foremen, have a pride in their position and in doing their work, and they realized that by saving money they were helping earn money for the company.

Q. Were they also helping earn money for themselves?

A. That had nothing to do with that particular form of contract, but the incentive method we established with this form of contract should immediately give them an incentive to do the work as quickly and as well and as cheaply as it could be done.

Q. And was that feature of this contract or was it not an important consideration with you?

A. Which feature?

Q. The feature that through this form of contract you would be able to get more efficient work out of your organization than under a straight cost plus contract?

A. It was much the most important feature of the contract to me.

Q. Now you say in this letter that it is impracticable to estimate within a reasonable percentage what will be the actual cost of construction. I want to find out just what you meant by that. In normal times, I don't mean war times, but I mean in normal

times what would you say was a reasonable percentage of error in an estimate on, we will say a nine thousand or a ten thousand ton tanker?

A. I should say that a reasonable estimate was one that fell within a range of 5 per cent. above or below a mean.

Q. You are speaking now of normal times where estimates could be made in detail?

A. Yes.

Q. Based on a fairly fixed commodity market?

A. On a fairly fixed commodity market and a fairly fixed labor market.

Q. And also a settled labor condition?

A. Yes.

Q. And also settled transportation conditions?

A. Yes.

Q. Is that answer you have given us just picked out of the air or is it based on any actual experience you have had?

A. That is based on the experience of a great many years, and comparing results with estimates. Now there are a number of cases under normal conditions where actual results have been so far afield from the estimates that it is almost impossible afterwards to believe that the mistakes were possible. I will cite certain cases. In the building of the battleship Wyoming at the Cramps Shipyard in 1907, at a time when the yard was very slack, a most careful estimate was made, and a bid of about four and a half million dollars was submitted, which was supposed to be labor and the material and the yard operating expense that would go into the building of the ship. When she was finished they had cost just $1,700,000 more than the $4,500,000 for labor, material and the yard operating expense. The Momus and Antilles, passenger and cargo ships built

for the Southern Pacific Steamship Company, were contracted for a little before that with a contract price for about $2,500,000 and we expected them to yield a profit of about 10 per cent. Actually they showed a loss of about $400,000 on about a two and a half million contract.

Q. Were they Cramps too?

A. They were built at Cramps also. Also the Creole, a sister-ship to the Monus and Antilles, were built at the Fore River Shipbuilding Company.

Q. Was that while you were at the Fore River or at Cramps?

A. No, at the same time these other two ships were built at Cramps, and that showed a loss of almost as much as the Monus and Antilles at another yard by approximately the same contract price. The battleship Rividava, built for the Argentine Government at Fore River, the contract price is $10,000,000 and ought to have showed at least full cost to build the ship, but when the ship was finished it showed a cost of $13,700,000, a slight error of 37 per cent. or a little over.

Q. I suppose these are extreme cases?

A. Yes, they are extreme cases, but there are a good many others. I would just like to tell you of a case that happened just last Summer.

BY THE MASTER:

Q. Are there any the other way?

A. The chances of making a mistake the other way is always comparatively small. The best you can hope for is to build under your estimate 4 or 5 per cent. You cannot ever make a big mistake that is in your favor in this kind of contract.

Q. You are speaking now of fixed priced contracts?

A. In fixed priced contracts.

BY MR. BROWN:

Q. In a competitive market, I suppose?

A. In any market. You could not make an error that will throw you very far on the side that is favorable to you. You know about the amount of material that goes into the ship; you know about the price. You may gain a little bit in your purchases. You know somewhere near what the labor cost is. You may, through a good break coming in your favor, save a certain small amount, but a 5 per cent. saving is awfully good and a 10 per cent. saving is wonderful and I have seldom seen it.

BY MR. EVANS:

Q. You mean 5 or 10 per cent. under the estimate?

A. Under the estimate.

Q. Not under your contract?

A. No, the estimated cost. We took two ships at Fore River that were finished in 1914 or 1915, for the Atlantic & Pacific Steamship Company, that showed the biggest percentage of saving that I have run into in connection with an estimate. I think the saving there was 10 per cent. and Mr. Brown can check that, but that is about what it was, and that is the biggest that I have run into.

Q. When you say saving in your estimate that is regardless of your contract price?

A. Oh, yes, that had nothing to do with the contract price. I am comparing only in these cases cost with estimates.

Q. You were going to tell us about an experience that you had recently?

A. This last summer, when the material markets were extremely stable and when labor was in certainly as good control as ever could be, we had oc-

casion to estimate on a job that was going to run about $9,000,000 in the rebuilding of five ships and I was particularly anxious to get that contract and having two entirely different estimating forces I put them both to work on this job, each one, with no connection whatever with the other, thinking that by taking the two estimates I would be able to bid closer than if I had only one to go on. When the results were turned in the total estimates on the material in the two cases were very close together. The two estimates for the labor varied by practically 30 per cent. We then took the labor estimate and compared it item by item, group by group, in accordance with our cost system. We took each man's estimate, and if he was lower than the other one we put his estimate for that group in one column and if he was higher we put it in another column. We then added up all the lows and all the highs and there was a difference of 50 per cent. in the two estimates. In other words, if one estimator had happened to choose a low spot on every one of the groups and the other man the high side, their labor costs, instead of being 30 per cent. higher, would have been 50 per cent. higher. I was then curious to see whether this total material estimate was merely an accident or whether they really were close. We did the same thing with the material and we had a variation between all of the lows and all of the highs of 20 per cent., and in some particular groups a variation of 300 or 400 per cent. Now I am simply citing this to show, that as a result of many years experience, no one can make me believe that estimating the cost of ships is an exact science. If you come out anywhere near you think you ought to, it is as much a matter of good luck

as good management, after you have taken the best precautions you know how to get results.

Q. You have told us of your experience with estimates in normal times. Tell us what were the difficulties in making up an estimate in December of 1917?

A. In December of 1917 the difficulties that were beyond those ordinarily incident to making this kind of an estimate were that there was no single stable item in the various elements that went to make up your cost. You could not figure the unit price of your labor. You could not figure the efficiency of your labor. You could not figure the efficiency of your manager. You could not figure the unit cost of your material. You could not figure the cost of your transportation. You could not figure the delays that were incident to getting the material assembled, which is an essential before you can begin the orderly construction of a ship, or the service of the material which is essential to contin ing its orderly construction. You could not figur the value of the spoiled material which is always a factor, in a time of that sort and very vital factor in the total cost of the finished product. So that in December, 1917, there was literally no element in the cost which you could be sure was going to come out where you thought it was when you tried to make the estimate.

Q. Well those conditions were exactly the same, I take it, in November?

A. In November, yes, November and December.

Q. You did have prices fixed on some stable materials, such as plates and shapes and steel products generally?

A. Temporarily, yes, but subject to change at the will of the War Industry Board, and for any material.

undelivered when they changed the price, your prices went up. They never went down. They went up to the new price that was set.

Q. In point of fact, did the prices on plates and shapes go up during the period?

A. I don't remember. As I recollect it they did not vary very much after the war industry board took hold of it.

Q. But in December of 1917, that was a contingency you had to contemplate as a possibility?

A. That was a contingency which faced us.

Q. You did have protection against increase in wage rates from the Government?

A. They were included in our contracts, yes.

Q. So why was the question of labor cost something that you could not estimate with reasonable accuracy?

A. Because of the efficiency of labor, which was even more important than the question of wages, was an entirely unknown quantity.

Q. Tell us something about the expansion of your forces?

A. The Bethlehem Shipbuilding Corporation, Limited, at the time of its formation on October 1st—well, I really am not very clear on these figures, but we worked it out at Fore River where I can give you the figures more accurately because I was closer to that yard. We worked up eventually at the end of 1919 to about 14,000 in the Fore River plant and about 8,000 at Squantum. My recollection is that on January 1st, 1918, we had about 8,000 men at Fore River, and I think I have those figures that I can check up if you would like to have them. For the entire Bethlehem Shipbuilding Corporation we worked up to a maximum of 70,000 men, and I

think on January 1st, 1918, we had perhaps 15,000 or 16,000 men altogether in our employ.

Q. Using your Fore River plant as a criterion, because you are more familiar with that, the 8,000 men that you had in January, that does represent some expansion in your forces over a long time?

A. Yes, that was double. What we call a normal force was between four and five thousand men.

Q. So, by January 1st, you had practically doubled your normal force?

A. Well, that was over a period of several years though.

Q. Was it over a period of several years?. Didn't that really come in 1917?

A. Well, we had expanded somewhat in 1916. I can give you the figures accurately. On February 1st, this is taken from the testimony given before the Committee of Commerce of the Senate on February 1st, 1918. We have 35,000 men on the payrolls the week before and we were increasing at the rate of about 3,000 men every four weeks, that is about 3,000 men a month.

Q. That figure refers to all Bethlehem's yards, does it?

A. That figure refers to Bethlehem's Shipbuilding Corporation.

Q. Can you give us the maximum that you worked up to?

A. We worked up to 70,000 maximum in the Bethlehem Shipbuilding Yard. That was in 1919.

Q. What type of men were you getting to expand your forces?

A. Every conceivable type excepting trained shipbuilders. Shoemakers, doctors, merchants, cloth weavers, almost anybody who happened along and wanted a job at good wages.

Q. And who wanted to dodge the draft?

A. Or who wanted to dodge the draft.

Q. Were you losing any of your old men?

A. Yes, as the new yards sprung up and their activities increased they were continually poaching on the old yards for their experienced men and that was a particularly serious matter as it affected our supervising forces. New yards would come along and hire the leading man and make him a foreman or assistant superintendent or even a superintendent, at several times the wages we were paying him, and just about as fast as we got men that were good for anything somebody came along and took them away from us.

Q. You said something about spoiled material. Has that got anything to do with the type of workmen you had?

A. Well, it had a great deal to do with it. In ordinary times with skilled forces your percentage of spoiled material will be extremely small. With green workmen and poor supervision your percentage of spoiled material would be very large.

Q. Large in substantial factor or element in the cost of a ship?

A. Yes, large enough to be a very substantial factor. I may cite the Cabrille, built at the Harlan plant, where, after the Armistice, and a change of inspectors and a more rigid set of requirements resulted in costing us a great many thousands of dollars for material which had been passed and which was determined which was not good enough when the war was over and we had to cut out and replace.

Q. Taking into consideration those factors of uncertainty about which you have told us, and any others which existed about which you have not par-

ticularly told us, what would you say about the accuracy with which a man, a competent and an honest man; might estimate the cost of ships to be laid down sometime in 1918?

A. There was no such thing as an accurate estimate for a ship under the conditions as they existed at that time.

BY THE MASTER:

Q. Was there at that time the other elements that were in Mr. Evans's question, an honest effort to make that estimate? Mr. Evans had two characteristics of his estimator, an honest and a capable estimator. You say that no one was capable of estimating at that time and I am asking you whether it was possible to make an honest effort to reach a fair result?

A. Certainly you can always make an honest effort to reach any results but the point that I would like to make there is that given an honest and a capable estimator, set to work to make an estimate for a given type of ship at that time, if he assumed that that ship would be built under one series of conditions which might have existed over the period of the contract, he might have reached one figure. Another equally competent and equally honest estimator, estimating another series of conditions, might have reached another figure so far from the first one that they would not have looked like the same thing. I cited in my previous testimony, and, in accordance with the best of my judgment, this is about correct, that given, we will say, a mean that might be reached by 20 men equally competent and equally honest working out a cost on that date, that one of these men might have been 25 per cent. below that mean and another 50 per cent. above. In other words there was a range of 75 per cent. over

a given mean that could be justified by equally honest and equally competent men, merely by the conditions which they assumed as the ones that would govern the cost during the period of construction of the vessel they were figuring on.

Q. Those conditions were conditions in which the element that they varied upon was the element of judgment and not fact?

A. Well, not even of judgment, because nobody could tell at that time whether the war was going to last, nobody could tell whether the draft was going to be more stringent and men we counted on were going to be taken out of the yard, nobody could tell whether the railroad system was going to break down completely, and it was very nearly busted at one time, and whether or service would be completely gone, and no one could tell whether the requirements of the Army at the front were going to be given entirely precedent over our needs in building it, that we could not get the material we required and no one could tell whether the expansion of yards would continue to take our supervisory forces. There was so many elements that you could guess on one way and I guess on another, but they were nothing but guesses and the net result was that it was just nothing but a rank guess.

BY MR. EVANS:

Q. But still, for the purposes of the form of contract which you wanted to use, the one you were using in the case of the Navy Destroyers, it was necessary to have something that represented a base cost or an agreed upon estimated cost, was it not?

A. Yes.

Q. It is your statement that a number of estimators competent and honest, attempting to arrive at what would be a proper figure to represent the

base or estimated cost for use in such a contract, might vary as much as 75 per cent.?

A. 25 per cent. below and 50 per cent. above the mean, yes.

Q. You mean that while it is not likely that the actual cost would under run a competent and honest estimate by more than 25 per cent. that there was comparatively no limit to the percentage the actual cost might over run such estimate?

A. Yes, that is exactly what I mean to say. I would like to give just one illustration in 1916 when we took a contract for a small oil tanker for the Argentine Government at the Fore River yard, and it so happened we happened to get what we felt was a very extravagant price and we thought we were going to get back some of the money that they took away from us when we built the Rividava, and when that ship was finished they had $25,000 more of our money and we had lost all this lovely profit we thought we had and $25,000 besides. That is simply an example of how costs run against you when things get going wrong.

BY THE MASTER:

Q. I am not quite sure I understand the effect of Mr. Powell's testimony, but, as I hear it, it is to the effect that the average arrived at on a reasonably fair exercise of judgment based on such facts as would be available would produce a figure which is not likely to be one that could be saved on in the course of construction.

A. Under normal conditions?

Q. Under normal conditions.

A. Yes, that is absolutely correct, that is to any very great extent.

BY MR. EVANS:

Q. Following the submission of the letter of De-

cember 13th, did you have a conference with representatives of the Fleet Corporation regarding it?

A. Yes, I had several conferences with the Emergency Fleet Corporation.

Q. On what dates?

A. On Thursday, the 13th, I read from my diary. "Wrote letter about what we could handle additional work and handed it to Radford about noon. Saw Bowles in afternoon about commandeered ship with Brown. Then Brown, Bowles and Harris had a further conference. Bowles was nasty. Saw about completing Drydock. Got our letter under way and took up oil ship at Moore's and cancellation of Savannah boats at Harlan's. At hotel. Got up stock ship letter and miscellaneous correspondence."

On the next day, Friday the 14th, "Letter about stock ships. Wood appeared. Signed letter about Drydock and got off letter. Handed in to Radford at noon and in P. M. Brown, Bowles and Radford had conference. Brown, Bowles in long row over stock ship. Bowles arbitrary and nasty. I saw Hurley and told him all our proposals were in and it was up to him." The next conference I had in Washington was Tuesday, December 18th.

Q. Read what your diary says about that.

A. "Arrived about 11 at Willard, Mr. Brown. Called at the department. (That was the Navy Department.) Saw Piez and Radford and saw Bowles about program. Bowles wants to load us with tankers and troop ships and ignores all arguments. At Willard's. Wrote up proposal on lines of Bowles program which is very bad for our yards."

Q. Is the proposition to which your diary refers the proposition which is contained in your letter

addressed to the Fleet Corporation of December 19, 1917, which has been offered in evidence as G-109?

A. Yes.

Q. So that I take it that at the conference that you had on the afternoon of December 18th that the particular types and sizes of vessels that you were to be asked to build had been determined upon?

A. Yes.

Q. And you were instructed to submit your proposals as to prices?

A. Yes.

Q. Was there anything said as to how quickly you were expected to submit your proposals?

A. Oh, yes, they wanted us to get them in immediately.

(Adjourned to 10 o'clock a. m., April 3, 1931.)

J. W. POWELL, direct examination resumed

BY MR. EVANS:

Q. In the testimony which you gave before Mr. Roberts, you stated that in June of 1917 Bethlehem employed, in all of its yards, about 12,000 men, and that during the war emergency, when you reached the peak, that had been increased to about 70,000; is that correct?

A. That is correct.

Q. You told us in your testimony yesterday that you had discussed with Mr. Piez, at some time prior to the submission of your letter of December 13th, the so-called half savings form of contract, and that he was familiar with it and approved of the use of

such form of contract under the conditions then prevailing. Do you recall that testimony?

A. Yes.

Q. Now I direct your attention to a memorandum addressed by Mr. Piez, as vice-president and general manager, to the Board of Trustees of the Shipping Board under date of October 9, 1918, which appears at page 494 of the printed documents and which was offered in evidence the last time as Exhibit B-6, and I direct your attention to the statement which appears on page 495 of that letter, which I am going to read to you. Mr. Piez states in this memorandum to the Trustees of the Shipping Board: "In fixing these estimated basis costs, care must be exercised that they be not placed at too low a figure, for if they are the probabilities are that the contractor will lose interest in keeping the costs down as soon as it finds that the ship will cost more than the estimated basis cost. We discussed this matter with the Board at the time the commitments were made last spring, and showed how we intended to fix the basis cost. At the suggestion of the Board, our method of fixing the basis cost was not kept on the record, the Board fearing that such a record might be an embarrassing precedent." Now does that statement which Mr. Piez made as to the method of operation of such a contract, accord with your views?

A. Exactly.

Q. I think when we adjourned last evening that you had told us the circumstances under which you submitted your proposal of December 13th. Did you discuss that proposal with Mr. Piez at any time prior to the meeting which you had with Admiral Bowles and Mr. Radford on January 3rd?

A. Yes, I saw Mr. Piez several times in the inter-

val and discussed that proposal and our letter of December 19th, submitting the definite proposal, with him.

Q. I think I asked you yesterday about the conference which you had with representatives of the Fleet Corporation on December 18, 1917, did I not? I have not the notes of testimony.

A. Yes, I think I read the record from my diary of the 18th into the record and that that was where we stopped last night.

Q. And following that meeting you and Brown got together and made up some figures, which formed the basis of your proposal which is contained in your letter of December 19th?

A. That is correct. That night we drafted a letter containing the general proposal and the next day I dictated the letter at the Harlan plant in Wilmington, where it was written.

Q. Had you at any time previously said anything to Mr. Brown about preparing cost data, or whatever would be required in order to enable you to submit estimates when the time came?

A. I cannot recall that I ever definitely gave Mr. Brown any such instructions. We were in communication, we spent a great deal of time together, and we discussed everything that was going on. Mr. Brown was fully conversant with the fact that we were going to have to submit proposals to the Fleet Corporation. He knew my fixed intention to only contract with them on the basis that had been accepted by the Navy Department, and he knew that when the time came for fixing the figures that went in, I would look to him to have the data.

Q. You and Brown sat down on the evening of December 18th and went over figures?

A. Yes.

Q. Can you tell us what you used as a starting point?

A. Yes. Mr. Brown did not have with him the detailed records that he had prepared, but he had in his mind certain cost figures that permitted him to sit down and reconstruct—

MR. BROWN: Just a moment, Mr. Powell. I want to give you every latitude, but I do not think you should go into what Mr. Brown had in his mind and I would like you to confine yourself to what Mr. Brown actually did.

THE WITNESS: Mr. Brown reconstructed the curve, using two points that he could plot from his knowledge of what he had previously done, or which he stated that he did from his recollection of what he had previously done.

BY MR. EVANS:

Q. What is your recollection of what he actually did?

A. He actually took a piece of scratch paper. He laid it out with abscissae of tons and ordinates of dollars, and laid out this curve from the two points which he stated he recollected from the other curve.

Q. Do you recall what those two points were?

A. One of them was a 10,000-ton tanker. I do not recall what the other one was at this time.

Q. Do you or do you not recall definitely that one of them was the cost of a 10,000-ton tanker?

A. After this lapse of years, I would not want to say that it might not have been some other type of ship, but at any rate it was two points that permitted him to locate this curve.

Q. Your letter says: "The figures quoted above

for the smaller tank vessels are based upon those given for a 10,000-ton vessel." Does that refresh your recollection as to what size and type of vessel you used to build up your estimate?

A. No, I cannot say that it does.

Q. It does not?.

A. No.

Q. Do you recall what Mr. Brown's figure was for a 10,000-ton tanker to be built on the East Coast?

A. No, I do not.

Q. You do not?

A. No.

Q. His testimony was that his figure was $2,000,000, or we will put it in terms of dead weight tonnage; his figure was $200 per dead weight ton for an East Coast tanker of 10,000 tons and $210 for a West Coast tanker of 10,000 tons, and that he struck an average between the East Coast and the West Coast figures by taking five West Coast and three East Coast and that gave him an average cost for East and West Coast of $206. Do you recall that, or have you no recollection of it?

A. No, I have no recollection of the exact figures.

Q. I observe that when you came to submit your breakdown of costs which appears in your letter of December 19th, your average figure for a 10,000-ton tanker is just about $10 a ton more than the figure which Mr. Brown says that he had derived?

A. Yes.

Q. Can you explain the difference?

A. Yes. I raised those figures for two reasons: first, because there was an item of increased cost of steel, which represented a contract for very high-priced steel that we had to use in connection with this program, and which amounted to about $2.50

a ton spread over the program that we expected to undertake. That was a very rough figure. Whatever else I put on I put on because I knew I was going to have to trade the final contract out with Admiral Bowles and I knew I would not get what I asked for, and if I did not ask for more than I expected I would not get out where I wanted to be.

Q. The figure of extra steel; is that the same item which appears in your breakdown as "Extra Cost of Steel, as per page 6 letter of December 13 averaged over all extra tonnage, $2.50"?

A. Yes.

Q. So, then, your $10, as I understand it, was made up of $2.50 to cover high-priced steel, and in round figures another $7.50 which you say was put in for trading purposes?

A. Yes.

Q. Did you, even with that addition of $10, or $7.50 a ton, whichever way you want to look at it—did you consider that the figure which you submitted of $216 a ton was within the reasonable range of the probable cost of those ships?

A. Yes.

Q. If you will refer to your letter of December 19th, you will find that your quotation was based on the total cost of the several types of vessels, and then you follow that by a breakdown of the cost per dead weight ton of a 10,000-ton tanker. I want to ask you whether the total cost was built up from the breakdown or whether the breakdown was made from the total cost?

A. The breakdown was made from the total cost.

Q. Is it an arbitrary breakdown, or is it based on some figures that you had?

A. It was an absolutely arbitrary breakdown.

Q. I noticed that in making that breakdown you allocated to A. S. and G. exactly ten per cent. of the labor, materials and operating expense. What was the basis for that, if you can tell us?

A. That was a figure that we had used for years in our estimates. It was a round figure that might be correct and might be quite incorrect, depending upon the volume of work that was being done. Many of those charges are fixed charges that do not vary with the volume of work; therefore, as the volume goes down the actual percentage of A. S. and G. goes up, and vice versa. But it was a figure we always used, and for the purpose of that breakdown we continued to use it.

Q. Of course, if you were breaking down a total cost figure and had used some other percentage, say five per cent. instead of ten, to represent your A. S. and G., then some other figure would have to go up?

A. Correct.

Q. So it is more or less of an arbitrary division?

A. It is an arbitrary division.

Q. Intended for what purpose?

A. Well, primarily, I should say, after this lapse of years, intended to give the Fleet Corporation some notion of a general split-up of the figure. That is the only thing I can say at this time. Probably they had asked us to give them some breakdown and we put it in for that reason.

Q. Did you have any conferences with Admiral Bowles or Mr. Radford regarding that proposal of December 19th until your meeting of January 3rd?

A. I think not. It was never discussed seriously until January 3rd with Admiral Bowles or with Mr. Radford.

Q. You did, however, have some talk with Mr. Piez regarding that proposal?

A. I did, on the 21st of December.

Q. Now I direct your attention to a letter which you wrote to Mr. Piez under the date of January 3, 1918, which appears at page 256 of the printed documents, being the letter which was offered at the last hearing as Government's Exhibit G-116, and I call your attention to a statement which appears at page 257, in which you said—this letter is addressed to Mr. Piez—"We further refer to my conference with the vice-president and general manager of the Emergency Fleet Corporation on Friday, the 21st ultimo. This will confirm the statement then made, that while this company cannot undertake any capital expenditures at its expense, if the terms of our proposal do not otherwise meet with the Emergency Fleet Corporation's approval, we are prepared to accept the order to construct these vessels on such terms as may be personally determined by Mr. Charles Piez, the vice-president and general manager, and strongly urge that there be no delay in placing this order, as we are making this offer because of our knowledge of the vital emergency now confronting this nation in connection with the requirements of additional merchant vessels." Does that reference in your letter refer to the discussion that you had with Mr. Piez regarding the proposal of December 19th?

A. Yes.

Q. Does your diary make any reference to it?

A. Yes.

Q. Will you refer to that, please?

A. On Thursday, the 20th, my diary states, "Saw Piez and gave him letter on program." That was a copy of the letter of the 19th. On Friday, December

21st, my diary states, "Saw Piez, gave him letter justifying price on ships at Maryland Steel and Union and draft of letter to us awarding program and put matter up to him." That is the only reference in the diary to seeing Mr. Piez.

Q. The entry in your diary refers to a draft of a letter "to us." Is that a typographical error?

A. That is a typographical error.

Q. It should have been "letter from us," should it not?

A. From us, but just what letter that refers to, unless I had drafted the letter that I afterwards handed in on January 3, I am not clear.

Q. At that time the contracts had not been awarded?

A. There had been no detail conferences on the contracts.

THE MASTER: Does not that require another explanation, Mr. Evans? Even with the change made it is not quite accurate, is it, to express what the witness now says it was intended to mean? Would you mind reading that entry as you suggest the change?

BY MR. EVANS:

Q. Mr. Powell, will you read the entry making such correction as you think is proper?

A. The only way I would correct it would be to leave out any reference to that draft of the letter, because I cannot at this time state definitely what that draft was.

Q. Have you a definite recollection of the conversation that you had with Mr. Piez on that date regarding your proposal of December 19th?

A. Yes, I have a very definite recollection. The afternoon before, that is, on December 20th, I met

Naval Constructor Louis McBride, of the Navy, and Mr. Charles Day, of the firm of Day & Zimmermann. They had just been abroad with one of the various commissions that the Government was sending over at that time, and they said they wanted to see me. They had dinner with me that night, and, as they had had access to all of the British Admiralty figures on submarine sinking, they told me for the first time what was really going on on the other side and how enormously greater the sinking of merchant ships had been than any of us who were not very much on the inside understood, and they asked me to charge myself with the duty of trying to circulate this news among the other shipbuilders and bring home to them the fact that there was a great deal more involved in the program of shipbuilding than just trying to make a few dollars. They were extremely earnest about this and they made a very deep impression on me, and I spent a good deal of time that night thinking about it and made up my mind that, so far as the Bethlehem program was concerned, we were not going to be the ones that were responsible for any hold-up. I felt that because of my personal relations with Admiral Bowles it was going to be very difficult for me to negotiate a contract, and that, unless pressure were put on our negotiations or unless somebody else took them in hand, there might be a very serious delay. So I went to Mr. Piez the next day and I made to him orally at that time the proposition which I afterwards repeated in my letter. I told him that we could not take fixed price contracts, but that outside of that, if he would fix any fee or any base price and any percentage of savings that he thought was fair, that if he would do that on his own study and on his own judgment,

Bethlehem would accept the contracts and would carry them out under those terms.

Q. What was his reply to that suggestion?

A. His reply was that he wanted me to negotiate with Bowles and then he would arrange for an early conference.

Q. And as the result of that you did have a conference with Bowles that afternoon?

A. No, this was on the afternoon of December 21st.

Q. Oh, yes, that was on the 21st.

A. I returned on the 2nd of January and on the 3rd I took him the letter, handed it to him, and he then said "I will arrange a conference this afternoon."

Q. Was Mr. Piez a close personal friend of yours?

A. Not at that time. I had known Mr. Piez for a great many years, having met him in Philadelphia probably in 1910 or 1912, somewhere about that time. I happened to know a great deal about him, because Mr. J. M. Dodge, the chairman of the Link-Belt, was a close personal friend of mine and he talked a great deal about Mr. Piez, who was the president of his company, and of whom he was very fond. Through my knowledge of Mr. Piez, I was prepared to find him just the kind of a man that he turned out to be in all of my personal associations with him, a very high-minded, able and courageous man, and after I had met him and talked to him for the half dozen times or more that preceded the conference of December 21st, I was perfectly willing to leave our case in his hands, with the assurance that we would get as near substantial justice as he could deal out.

Q. But that was not because of any close personal

friendship that existed between you, but because by reports and by such observation as you had been able to make during your brief association with him, you considered that he was a man who would see that you were dealt fairly with?

A. That is correct.

Q. I call your attention to the letter which you wrote to the Shipping Board on March 7, 1918, in connection with one of the later contracts, this letter appearing at page 337 of the Documentary Evidence and being the letter which was offered in evidence before by the Government as G-126. At page 338 you state: "However, because of its full appreciation of the nation's desperate need of ships, it desires to repeat the offer made orally and in writing in December and January last, that it will accept the order to construct these additional vessels at such lower base price and such smaller fee as may be personally determined by Mr. Charles Piez, vice-president and general manager, with the proviso in the present instance that the contracts will otherwise be duplicates of those for new construction already signed by Bethlehem Shipbuilding Corporation, Ltd., and the Emergency Fleet Corporation." Is that reference to the offer which you made in December? Does that refer to the meeting which you had with Mr. Piez on December 21st, which you just told us about?

A. Yes.

Q. And the reference to the January offer, I suppose, is to your letter of January 3rd?

A. Yes.

Q. How was this letter of January 3rd delivered to Mr. Piez?

A. I handed it to him personally.

Q. Was that before the conference that you had with Admiral Bowles?

A. Yes, that was in the morning.

Q. Did Mr. Piez make any statement at that time?

A. I do not remember his making any statement beyond saying that he was going to arrange a conference for that afternoon, which he did. As a matter of fact, I think we walked together in to Admiral Bowles and he said that he wanted him to meet us, and Admiral Bowles arranged that the conference would begin at two o'clock.

Q. In your letter of December 13th, in which you suggested the half savings form of contract, you said—I am reading now from page 202—"The basis of fees and estimated cost to be such as to offer a reasonable probability of a net earning after payment of all War and Excess Profit Taxes as to-day existing, of ten per cent. of the present estimated cost of construction," and again in your letter of December 19th you referred to your letter of December 13th for a statement of the basis of contract under which you proposed to construct the vessels which were covered by your proposal of December 19th. Now I want to ask you whether, in making up your figures which became the subject of your proposal of December 19th, you included any item to take care of War and Excess Profit Taxes?

A. No.

Q. Did you have any information as to what War and Excess Profits Taxes were at that time?

A. Yes, in a general way I knew that the maximum bracket was around 60 per cent., and that the volume of business that Bethlehem was doing would throw any profits that we made on these contracts, in

all probability, into that high bracket, and of course nobody could tell how much more the war profits might be later, but that was just one of the uncertainties that went with the times.

Q. But did you attempt to figure out what your War and Excess Profits Taxes might be under these contracts on the basis of the figures that you were submitting?

A. No.

Q. Is there hidden anywhere in these figures which appear in your letter of December 19th, any item which was intended to take care of War and Excess Profits Taxes?

A. There is nothing hidden in that estimate. I have told you the reason for putting on roughly $10 a ton to the base figures. Underneath that the estimate was supposed to be a reasonable figure of probable cost, that gave us a chance, if things broke our way and if we did our job well, to make a reasonable saving, half of which would accrue to Bethlehem. I have stated before, and I would like to state again, that that estimate, in my judgment then as now, represents an average figure that we might have gone 50 per cent. under, if a competent estimator had based his figures on a different set of circumstances—

Q. Do you mean 50 per cent. under?

A. 25 per cent. under and might have gone 50 per cent. over, if he had assumed another set of circumstances.

Q. Can you explain to us where you hoped, out of those figures, to get enough savings to take care of your excess profits taxes, and how you hoped to be able to do it?

A. I hoped—and it was, of course, based entire-

ly on hope—that we would be able to increase our efficiency of management, our efficiency of labor, that we would find ways to increase our efficiency of service of material, and that, by exercising the best efforts that we had in us—and when I say us, I mean myself and the management and extending down to the workmen—that we would be able to do much better than the reasonable probabilities at that time would lead us to suppose.

Q. Take as an illustration the condition that then existed in your Harlan plant. Can you give us some idea what that was?

A. The conditions existing in the Harlan plant in Wilmington were much the worst of any in our case. Wilmington was located in the center of the Philadelphia district, which had become the great shipbuilding center of the United States. Hog Island had started up in Philadelphia, the Merchant Shipbuilding Company in Bristol, Pusey & Jones had built, or were building, a yard in Gloucester, the New York Shipbuilding Company had doubled the size of their plant, and the net result had been that the demands for labor in this district had so far exceeded the supply that labor was completely out of hand. If a man did not like his job in one place, or found he could get a little better terms somewhere else, or if he did not like his foreman or something his foreman said to him, he just walked off one job and on to another. The net result was there was no discipline in the yards, unionism was rampant, and the situation with regard to labor was the worst that I have ever had to deal with in my shipbuilding experience, far the worst.

Q. And I suppose that naturally reflected itself in your costs?

A. That reflected itself very radically in our costs.

Q. Was that one of your problems, to improve labor conditions at Harlan?

A. That was one of our vital problems.

Q. And if you had failed to do that, and if conditions such as existed at Harlan had spread to your other plants, is it likely that you would have made any profit under your half savings clause?

A. In my judgment, if the conditions that obtained at the Harlan plant at that time had spread to the other plants, we would not only not have made a nickel, but we would have very considerably exceeded the base prices that we submitted.

Q. Did you, in point of fact, get conditions at the Harlan plant in hand eventually?

A. We got them in hand. They never were good and never compared with the conditions in the other yards until after the war was over.

Q. But you were able to improve them?

A. We did improve them materially.

Q. What about the conditions in the other plants?

A. Sparrows Point was always a difficult proposition. It was so located that the transportation and housing problems were very difficult. Baltimore had become a great manufacturing district for all sorts of war materials, so that the supply of labor in Baltimore for all purposes was inadequate. We only were able to build up the Sparrows Point force at a much lower rate than we wanted to, and our conditions there were much less satisfactory than in the two largest plants, at Fore River and at Union.

Q. Then I take it that one of your great problems, as the driving force of this organization, was

to improve your labor conditions, or first to prevent labor conditions from getting worse and then to try to improve them?

A. Yes.

Q. Over what they were in December of 1917?

A. Yes.

Q. And if you were able to do that, then there was a possibility of some profit in these contracts under the half savings clause?

A. Yes.

Q. Was there any likelihood, or did you at that time foresee any likelihood, of any substantial saving in your material items?

A. No, I should not have expected at that time to make any saving of any amount in the materials.

Q. So that, if Bethlehem was to make any money out of these contracts in excess of the fixed fee, it was your judgment that the only way to do it was by increasing the efficiency of the yards?

A. Exactly.

Q. And that was your job?

A. Yes.

Q. And that was the task to which you set yourself?

A. Yes.

Q. And of course that was one of the purposes of this half savings contract, to give you an incentive to do that very thing?

A. That was the primary purpose of that form of contract.

Q. Not only to give you the incentive, but to enable you to pass that incentive down to the foremen in the plants and the bosses on the ships?

A. Yes.

Q. And in that were you reasonably successful?

A. I believe we were very successful, under the conditions.

Q. Were you assisted in any way by the early termination of the war?

A. Undoubtedly.

Q. It is a matter of general knowledge, I think, that at that time nobody could forecast, or attempt to forecast, the termination of the war?

A. In December, 1917?

Q. In December, 1917.

A. No one attempted to forecast it that I know of.

Q. In point of fact, did your labor conditions materially improve after the Armistice?

A. Yes, they did.

Q. And would you say that that was a material element in the savings that you have been able to effect over this whole contract program?

A. Undoubtedly.

MR. BROWN: I think you want to be specific about the date, so that we have Mr. Powell's statement definite, for what it is worth. Of course it improved after the Armistice, but did you not intend to direct the question as to when?

BY MR. EVANS:

Q. How soon after the Armistice did labor conditions begin to improve?

A. Well, almost immediately, almost immediately. They were better at the time of the Armistice, considerably better than they had been when we signed these contracts, but they improved more rapidly after the Armistice.

Q. They were better at the time of the Armistice than they were in December of 1917?

A. Yes.

Q. But they were better, we will say in April, May and June, 1918, than they were in December, 1917?

A. I think they had begun to improve at that time.

Q. Had begun to improve?

A. Yes; my feeling is that at the time we signed these contracts we were about at the low ebb of our efficiency, in the winter of 1917.

Q. Is that feeling based on any facts?

A. No, that is based on pure judgment only.

Q. Not on any study that you have given, any critical study?

A. Not on any facts that I could quote.

Q. Now you have made some reference to relations between you and Admiral Bowles. You said you thought it was going to be a difficult matter for you and Admiral Bowles to negotiate a contract. I do not want to go into any personal differences that existed between you and the Admiral and the reasons for them or the merits on one side or the other, but let me ask you whether it is a fact that for some years you had been associated with Admiral Bowles as his subordinate?

A. For about a year and a half.

Q. And you had been a great admirer of Admiral Bowles, had you not?

A. Yes.

Q. And you never lost your admiration for his ability as a constructor, did you?

A. Never.

Q. The difference that occurred between you was

a personal matter which arose when you were associated with Cramps and he was president of Fore River; is that right?

A. Yes—not a personal matter, it was a business matter.

Q. A matter of competition?

A. A matter of competitive business.

Q. And that feeling was accentuated by reason of the fact that you superseded him as president of the Fore River Shipbuilding Company?

A. Yes.

Q. So that the relations between you were, to say the least, strained?

A. Yes.

Q. And while you had confidence in Admiral Bowles' ability, and I suppose he had confidence in your ability, did he not?

A. I cannot answer for that.

Q. At least you can answer for this, that he had no confidence in your integrity and you had no confidence in his integrity; is that right?

A. I can answer the last part, I did not.

Q. So that when you came to negotiate, it was not in a confidential relation, but it was rather at arm's length?

A. It was certainly at arm's length.

Q. I forgot to ask you how you made up your estimates on the tugs, which estimates are included in your letter of December 19th.

A. When Mr. Brown and I sat down on the night of the 18th to get together these figures, he had made no study of the probable cost of these tugs, and when we came to submit a figure for that item of the program we talked over what we knew to have been the cost of some tugs built seven years earlier

at Cramps and at Fore River. These tugs were about 110 feet long and had 1000 horsepower, and the tugs that we were to submit figures on were 150 feet long and had about 600 or 800 horsepower, I forget which. We decided that as the tugs that we had built in 1910 we had gotten $110,000 for, and as both Cramps and Fore River had lost money on them, about $300,000 was about a bare base cost for those tugs and about $30,000 a fair fee, and that is the way we made up our figure, and that is all the estimating that was ever done on those tugs, and I think we probably thought about it for fifteen minutes, and I also think that at that time there were no plans and specifications for the tugs, at least we did not have them.

Q. You were estimating on the tugs simply on the basis of the overall length and the horsepower?

A. Yes, and our knowledge of what sum big tugs built seven or eight years before had cost.

Q. Do you consider that that method of arriving at an estimate was about as close as you could come, having as little information as had been furnished you?

A. I think it was probably as well as we would have done if we had had all the information and all the time in the world, under the conditions.

Q. I suppose that in the shipbuilding business, as in the construction business generally, a man, after years of experience, knowing the costs of certain base materials and labor rates, can estimate the cost of a vessel at so much a ton and arrive at a pretty accurate result, assuming that business conditions are stable?

A. Yes, I should say that a man can arrive at a fairly accurate result if he has a similar ship on

which to base his judgment. Generally speaking, under normal conditions, you want a detailed estimate to consider, and then on top of that detailed estimate the shipbuilder of experience will know what he has got to either add or subtract, to reach what in his judgment will be the most probable cost figures, and he can go pretty badly astray under any conditions.

Q. What I had in mind was this: if I today wanted to build an office building, I could go to an architect who had had experience in the building of office buildings, and give him a building of a certain type, steel construction, we will say, and a certain facing, whether it be brick or limestone or whatever it is, and he, by his experience and with his knowledge of material and labor, can tell me that the building will cost forty cents a cubic foot, or fifty cents a cubic foot, and that will be a reasonably close figure. Now does the same thing hold true in shipbuilding?

A. Well, in the first place, I do not entirely agree with your premises, because I have seen too many widely varying bids on the part of contractors on the same design of office building to think that the figures that the architect gives you are apt to be very close, for you often see variations of ten or twenty per cent. from the figures the architect gives you in the building of an ordinary building.

Q. I do not mean that, Mr. Powell, that they would be very close or that they would take the place in normal times of a detailed estimate, but it is my impression that that is a very common practice among architects, to make a rough estimate.

A. Oh, yes.

Q. Of the cost of a building, based on the cost per cubic foot.

A. That is a common practice among shipbuilders.

Q. That is what I asked. Is that analogous to the practice among shipbuilders of figuring a cost of so much per dead weight ton?

A. A shipowner will say to a shipbuilder, "I think perhaps I would like to build a ship for the trade between, let us say, New York and Havana, and she ought to be about so long and she ought to be so fast and she ought to carry about so many passengers and so much cargo. Now before I can proceed with my studies as to whether I want that ship or not, tell me approximately what she will cost." From the records, with a very small amount of estimating, you can give an approximate figure that lets him make up his mind whether he wants to go ahead or not, and after that the question of detailed plans and estimates and final contract figures can be considered.

Q. Now I want you to tell us your recollection of what occurred at the meeting on January 3rd with Admiral Bowles and Mr. Radford and any other representatives of the Fleet Corporation who may have taken part in that meeting. Tell us first what your recollection is to who were present.

A. My recollection is that Admiral Bowles, Mr. Cuthell, who was chief counsel for the Emergency Fleet Corporation, Mr. Radford, Mr. Brown and myself were present throughout the negotiations, which began around two o'clock and lasted until seven that night. During the time we were in Admiral Bowles' office, where they took place, my recollection is that Mr. Piez was in and out once

or twice, that Mr. Coxe was in and out, that probably Mr. Underwood was called in, and there were a number of people in and out at different times in that afternoon.

Q. At that conference did you come to a verbal agreement with Admiral Bowles and Mr. Radford as to the prices of the vessels which had been included in your proposal of December 19th?

A. Yes, we finally reached an agreement.

Q. Between December 19th, or December 18th, when you had made up your proposal, and January 3rd, when you had your meeting, had you fortified yourself with any figures which you got from Bethlehem or got from Brown?

A. Yes, Mr. Brown had taken off the exact figures—

MR. BROWN: Mr. Powell, won't you confine it to what you did personally? I understand the object of the question and I would like you to confine your answer to what you did personally, and I ask to have the other answer stricken out, as to what Mr. Brown did, unless you know definitely just exactly what he did do.

THE WITNESS: I told Mr. Brown to bring with him to that conference the exact figures taken from the curves which he said that he had for the cost of the different types of ships, as to their probable cost.

BY MR. EVANS:

Q. In what form did he give them to you? Did he bring his original graph of curves?

A. No; he simply brought the figures.

Q. He brought the figures for the different types of ships?

A. For the East and West Coast ships. In the original proposition we merely hit an average price for East and West Coast for any given type of ship, and for this conference we were prepared to give the difference due to the difference in cost in the yards on the East and West Coast.

Q. Were the prices which were finally agreed upon in the meeting of January 3rd the same as the prices that were submitted in your proposal of December 19th, or were they less?

A. They were substantially less, both the fees and the base-prices.

Q. By what process did you arrive at the final figures which were agreed upon?

A. By the ordinary processes of barter and trade, Admiral Bowles standing fast that he would not give me what I asked, and I gradually going down until he finally accepted the figures, and in each case he Jewed me down to the figure that Brown had as his cost figure before he stopped, and there I would not go any lower.

BY MR. BROWN:

Q. Before he stopped, did you say?

A. Before he stopped and I would not go any lower.

Q. You mean that he did not attempt to Jew you down below those prices?

A. He certainly did.

BY MR. EVANS:

Q. But you stuck fast to the figures that Brown had given you?

A. Yes.

Q. At that conference was the subject of the stock ships at Union and at Sparrows Point taken up and disposed of?

A. Yes. After we had settled the question of new ships, I proposed that the stock ships be placed on the same basis, and that was agreed to very quickly. That took a very few minutes after we had determined the other question.

Q. When you say on the same basis, you mean as to the form of contract?

A. The same basis as the form of contract, and relatively the same prices.

Q. Relatively the same prices per ton?

A. Per ton, yes.

Q. Your proposal of December 19th was delivered by you personally to Mr. Piez, was it not?

A. Yes.

Q. On what date?

A. On the 20th.

Q. So that the Fleet Corporation had your figures from December 20th until January 3rd?

A. Yes.

Q. In that interval did any of the Fleet Corporation representatives ask you for any information as to how your estimates had been arrived at?

A. No.

Q. At the conference on January 3rd did any of the Fleet representatives ask you for any information as to how your estimates had been arrived at?

A. They certainly asked everything they could think of.

Q. Did they ask you how you had arrived at your estimates?

A. Yes, I should say so.

Q. What did you tell them?

A. We told them that we had arrived at it by using our best judgment from the costs of doing work at that time and that nobody could make a

decent estimate, that it was a matter of educated guesswork, as we had written them in each of the letters we put in, and that we thought we were putting in figures that represented a fair probable cost, giving us a chance, if we did the job well, to make a saving that would compensate us for part or all of the excess profit taxes that we would have to pay.

Q. What I really meant to inquire was this, whether the representatives of the Fleet Corporation, either at that time or at any time previous to the conference of January 3rd, had asked you for any of your cost figures on any previous vessels, so that they might check?

A. We told them we did not have any repeatedly. We told them there was no such thing as an estimate under those conditions.

Q. You did not get my question. Let me refer now to what Mr. Sanford said. Mr. Sanford said that if the Fleet Corporation had had available to it information from Bethlehem as to the cost of other similar vessels which had been completed prior to the contract ships, like 253 and 254, we will say, or 158 and 159, they would have been able to check the accuracy of these estimates. I am asking you whether, either at the conference of January 3rd or at any time previous to that conference, the Fleet Corporation representatives asked you for any such information?

A. I never recollect their asking for any such information, and I think I would remember it if they had.

Q. I will ask you whether at any time up to the time that the contracts were actually signed, the Fleet Corporation ever asked you for any such information?

A. No.

BY MR. BROWN:

Q. As I understand it, just to clarify the record, that relates from the time of the submission of your proposal of December 19th?

A. From the time of the first discussions of the proposals in December.

Q. The proposals of December 19th?

A. Yes. That covers the month of December.

MR. BROWN: That makes it cloudy again. I just want to get it clear.

MR. EVANS: If it is cloudy, Mr. Brown, I am afraid you have clouded it.

THE WITNESS: I will make it clear. They never asked me for those figures at any time.

MR. EVANS: I offer in evidence a memorandum addressed by F. T. Bowles and G. S. Radford to the United States Shipping Board Emergency Fleet Corporation under date of January 5, 1918, which appears at page 258 of the Documentary Evidence, and which was offered in the last proceeding by the Government as Exhibit G-117. I ask that that be marked in this hearing as B-28. With the Master's permission I will read it into the record now. It is addressed to the United States Shipping Board, Emergency Fleet Corporation, in Washington, dated January 5, 1918:

"Memorandum for the Vice-President and General Manager:

Bethlehem Shipbuilding Corporation, Ltd.

We hand you herewith the Bethlehem Ship-

building Corporation's proposal, dated December 19, for additional construction at their various plants, amounting in all to nineteen vessels, exclusive of tugs. It may be noted that, with the exception of three ships, the vessels in question are troop ships and tankers—ships of a type that only real shipbuilders can produce satisfactorily. As is well known, we have been having difficulty in placing such vessels.

We wish to place on record the fact that the Bethlehem Shipbuilding Corporation's representatives have insisted on comparatively high prices for these vessels; that they have only with difficulty been persuaded to quote us on the types of ships referred to; and, that their attitude has been characterized by an arbitrary refusal to guarantee or stand behind delivery dates. In other words, it was difficult to persuade them to quote even a tentative delivery date, and they refused positively to accede to a bonus and penalty clause for delivery.

The letter herewith, addressed to the Bethlehem Shipbuilding Corporation, in reply to their proposal, has been prepared for your signature, and is now presented with the recommendation that it be signed. While the prices we have agreed to, with representatives of the Bethlehem Shipbuilding Corporation, are not satisfactory to us, nevertheless, they represent a material reduction from the prices quoted by that corporation. Realizing that the nation will need these vessels, we have been actuated by the belief that further delay in placing the contracts should be eliminated, and we believe

that we have made the best compromise possible under very difficult conditions.

F. T. Bowles,
Manager,
Division of Steel Ship Construction.

G. S. Radford,
Manager,
Contract Division."

THE MASTER: At the bottom there it refers to two enclosures. Are you offering as Exhibit B-28 the enclosures as well or are they to be offered separately?

MR. EVANS: They took different exhibit numbers and we will offer them. It is agreed that the enclosures referred to and accompanying the memorandum of January 5, 1918, Exhibit B-28, were Bethlehem's proposal of December 19, Exhibit G-109, and letter from Mr. Charles Piez, vice president and general manager of the Fleet Corporation, addressed to Bethlehem Shipbuilding Corporation under date of January 5, 1918, which appear at pages 259, 264 and 267 of the Documentary evidence, which letters were offered in evidence at the last hearing respectively as G-118, G-119 and G-120, and which I now offer in evidence on behalf of Bethlehem as B-29, B-30 and B-31.

(Admitted as Exhibits B-29, B-30 and B-31.)

BY MR. EVANS:

Q. The reference in the memorandum is to the conference which you and Mr. Brown had with Ad-

miral Bowles and Mr. Radford on January 3rd, is it not?

A. Yes.

Q. Following the contracts which were the subject of these negotiations, Bethlehem from time to time took on contracts for additional tonnage from the Fleet Corporation?

A. Yes.

Q. Insofar as the terms of these contracts are embodied in the correspondence, I won't take the trouble to go over them in your testimony, but can you tell us whether all of these subsequent contracts were negotiated through correspondence or were there any conferences about which we ought to know?

A. There were one or two conferences at various times. The principal conference that I remember was the one in April between the time that Mr. Schwab had accepted the position of Director General and the time that he took office. Mr. Piez was anxious to have certain additional contracts cleaned up and out of the way before Mr. Schwab actually took office so there could be no question of his having had any hand in the business negotiations, and we therefore submitted a letter in April and I went down afterwards and straightened out a few questions in connection with it. I think that letter was signed by Mr. Brown and was dated April 18th.

Q. I call your attention to a letter which appears at page 385 of the Documentary Evidence and it is signed by Mr Brown and I will ask you whether that is the letter to which you had reference, the letter which was offered in evidence at the last hearing and has been offered in this case as Exhibit G-132?

A. That is the letter.

Q. With whom did you have that conference?

A. On Tuesday, April 23rd, I saw Mr. Hurley, Mr. Piez, Mr. Cuthell and went over all of the outstanding items and we settled everything in principal although a great many of the details were handled afterwards.

Q. Was there any discussion as to price at that time?

A. Yes, my recollection is that in submitting that letter of the 18th—

MR. BROWN: You said before in your testimony here there was practically no discussion about that?

THE WITNESS: That is correct. There was practically no discussion about price but I was simply trying to check up to see whether in that instance the Fleet Corporation accepted the price we put in or whether they cut them as they did on the previous ship.

BY MR. BROWN:

Q. But it is all a matter of correspondence?

A. It is all a matter of correspondence.

BY MR. EVANS:

Q. I did not get the connection between the letter of April 18th and the memorandum in your diary that I think you said was dated April 22nd?

A. April 23rd.

Q. How does that conference on the 23rd tie in with Brown's letter of the 18th?

A. At that time that letter was discussed and the Fleet Corporation told me definitely that they were giving us those contracts on whatever prices they had determined and that would be followed by

formal notice which did come some days later. Mr. Piez was trying to get the matter settled before Mr. Schwab took office.

Q. Were you soliciting this additional business or was it being urged on you?

A. We were not soliciting it. We were being pushed into it.

Cross Examination

BY MR. BROWN:

Q. Just to get the proper picture of what you were doing at the time of the negotiations of these contracts, as I understand it, from the time of the organization of the Shipbuilding Company until well on into 1918 you were literally swamped with your executive duties and it would have been physically and mentally impossible for you to burden yourself with the details and the business of your company. Is that correct?

A. That generally represents the situation. I was handling a great volume of business and was as busy as I could be.

Q. That is you were in charge of the active management, in other words, of all these five subsidiary companies of the Bethlehem Shipbuilding Corporation, were you not?

A. Yes, so far as their operation and the sales of their product was concerned.

Q. And would you say that from the time of the organization of the Shipbuilding Company, running through December of 1917, that you and Mr. Brown were in very close contact in all matters of cost affecting the shipbuilding industry?

A. We were in just as close contact as we could be, both being very busy men and having a great deal of traveling to do and often being separated for a number of days.

Q. Very frequently on your travels you took Mr. Brown along with you, as I understand it?

A. Very often.

Q. Referring to the chart which has been offered in evidence as Exhibit G-34½, and with respect to which you are now familiar, I will ask you if you remember the first time that you ever saw that chart?

A. No, I do not.

Q. And just to make it clear, as I understand it, you have absolutely no recollection as to the first time of your ever having seen that chart?

A. I have not.

Q. And, of course, in speaking of the chart, I am also speaking of a copy of the chart, whether photostated or otherwise?

A. Yes.

Q. And your answers apply to that, of course?

A. Yes.

Q. Do you remember ever having seen that chart or a copy of it prior to the hearing before Mr. Roberts which took place in May, 1929?

A. Oh, yes, I have seen it before that time.

Q. You had seen it before that time?

A. Yes.

Q. And where had you seen it before that time?

A. I think in Mr. Brown's office of the Bethlehem Company, New York, and I should say that the one time I saw that chart was in his office at 25 Broadway, New York. Whether I saw it subse-

quently at conferences with the attorneys I am not prepared to state.

Q. And about when did you see the chart in Mr. Brown's office in New York?

A. Well I cannot give you the exact date, but if you would like to have it I think I could find it. I did not know that was coming up.

Q. I would like to get it if you have it?

A. I would have to get it when I go back to Boston and had an opportunity to make an examination of my diaries for the last three years.

Q. How do you know there would be a record of your having seen that chart in your diaries?

A. Because I unfortunately have not seen Mr. Brown so often within recent years that I could not identify the date from the entries of my visits with Mr. Brown.

Q. I got the impression from Mr. Brown's testimony that you were a frequent visitor in New York, perhaps not a frequent visitor but that you would stop in from time to time to see him?

A. Well I did stop in occasionally but I don't believe I have been in Mr. Brown's office three or four times in the last three years, so I certainly was not a very frequent visitor.

Q. Where have you been located in business since leaving Bethlehem in 1920?

A. In Boston, and in New York. Boston has been my home. After I returned to Boston from my connection with the Emergency Fleet Corporation that became my permanent home and headquarters and I have been in business in New York and have spent a very considerable part of my time there.

Q. During all the years, we will say, between 1920 and now?

A. Between 1922 and the present time.

Q. You have spent a very considerable part of your time in New York City in business?

A. Yes.

Q. And you have had an office or your company has in New York?

A. At times and at times not.

Q. And where was your office located in New York?

A. First I was associated with Aldred & Co., 40 Wall Street, and for the last two years the United Drydocks at 11 Broadway.

Q. They were quite near to Bethlehem offices, were they not, within a block or so?

A. Reasonably. 11 Broadway is next door.

Q. So that it is quite possible that you have seen Mr. Brown frequently during the period between 1921 and 1922 and the present time, is it not?

A. I stated that I had occasionally seen Mr. Brown, not nearly as often as I should have liked to.

Q. What I want to know, if you had access to these diaries that you mentioned, would you be able to tell from those diaries that particular occasion upon which Mr. Brown produced this chart and showed it to you?

A. No, sir. As I said, I saw him so infrequently that the context of my diary, the first meeting when we were considering the Bethlehem case, I believe I could pick out the exact date on which I saw that chart when I looked up my diary, but when I do I may not be able to do it at all.

Q. That is just what I supposed. In other words, according to the nature of your diary as you explained in your direct examination, it is quite like-

ly that if you did see this chart on one of your visits to Mr. Brown there would be some notation which would indicate to you that he had showed you that chart?

A. No, quite improbable that I would have made any note as to having seen the chart.

Q. And I suppose it would be equally improbable that your diaries of November and December, 1917, would contain any notation in case that chart had been presented to you?

A. They do contain no notation of that sort.

Q. You are quite sure of that?

A. Yes.

Q. There is nothing in your diaries which would indicate to you that during November and December, 1917, or prior to January 3, 1918, Mr. Brown showed you the chart to which I have referred?

A. There is no mention of the chart.

Q. Going back to your visit to Mr. Brown's office, in New York, when you discussed the subject, do you say the chart was shown to you at that time?

A. Yes.

Q. And you cannot give us approximately the date when that occurred, as I understand it?

A. Well I can say that it was between two and three years ago.

Q. And it is true, however, that you have a very distinct recollection now of having seen the chart at that time?

A. Yes.

Q. And there is no doubt about your having such a recollection, is there; no doubt about your having seen the chart at that time?

A. I think not.

Q. And what was the occasion of the chart being shown to you at that time?

A. Mr. Brown and I were discussing this Bethlehem suit and its various aspects.

Q. And, as I understand it, he then produced the chart and said "Powell (or whatever name he called you) here is the chart for all the estimates I submitted to you as the basis for the contracts in controversy"?

A. That I don't remember.

Q. I mean, in effect, that would be the nature of the discussion?

A. That would seem reasonable.

Q. And he would say, "Remember now, you have a very substantial interest in this litigation, you will get seven-tenths of one per cent—"

A. May I state right here Mr. Harry Brown never made any such statement to me and he knows me well enough not to insinuate any such thing has any bearing on my conversation or on my testimony.

Q. I am only trying to help you and my question was not asked with any idea that any reflection on either you or Mr. Brown but I was merely trying to state what the probability was in connection with this conference to see if I can refresh your recollection as to what took place.

Now, coming back to your interest in this litigation, it is a fact, is it not, that your interest in whatever is recovered by the Bethlehem Corporation from the United States Government in this case, amounts to seven-tenths of one per cent?

A. Not necessarily what they recover from the Government. It is seven tenths of one per cent. of the profits accruing to Bethlehem except on troop ships, from these contracts.

Q. So you have a very substantial interest in the outcome of this litigation.

A. I have.

Q. In view of that fact would it not be likely when Mr. Brown produced this chart in New York at this conference that you would have some recollection as to what was said about that chart?

A. I have talked about this suit so many times and so much and to so many people that if I had an accurate recollection of all that was said about it there wouldn't be room in my head for anything else.

Q. That is very plausible and I am not asking you to remember anything that is impossible to remember, but Mr. Mason is hearing the case for the first time, and, as I understand your testimony, and I may be wrong, Mr. Brown had an interview in his office with you which took place within the last two years in all probability?

A. Three.

Q. For the first time, according to your recollection, he showed you this chart which has been offered in evidence as G-34½?

A. Mr. Brown, I didn't make any such statement.

Q. Isn't that correct?

A. No. To the best of my knowledge and belief I probably saw that chart a number of times while it was being used at Bethlehem and while Mr. Brown was working on it.

Q. I am asking about your recollection. Do you recall having seen that chart prior to this interview with Mr. Brown about which we have been discussing?

A. I cannot give you a definite statement that I

recollect it because I don't. I am morally certain that I saw it not once but several times.

Q. When he presented that chart to you within the last two or three years in his office in New York, did you then say, "Why, that is an old friend that I have often seen, that chart". Do you remember that?

A. I don't recall that I recollected that at all.

Q. You don't remember that you ever have seen that chart before Mr. Brown produced it in New York?

A. I have no definite recollection I saw it before, although I believe I had seen it a number of times. I certainly knew of its existence.

Q. Because of what Mr. Brown had told you?

A. Because of what Mr. Brown told me in our various conferences in Washington in 1917.

Q. But not because you have any recollection of ever having seen the chart yourself; is that correct?

A. That is correct. I cannot say definitely that I did see that chart on any certain date.

Q. But you knew it existed because Mr. Brown told you it existed; is that correct?

A. Yes, correct.

Q. Well, as I understand it, to summarize the situation, you don't remember what the discussion was which took place when Mr. Brown produced this chart at your talk when you met in New York; is that correct?

A. Yes.

Q. Do you remember whether you told him at that time that you did not remember anything about the chart?

A. No, I do not.

Q. You don't remember what took place?

A. No.

Q. I ask you whether you testified as follows, in answer to the following questions at the proceeding before Mr. Roberts, which appear at page 658 and the following pages in the record of the proceedings, being questions by Mr. Brown:

"Q. Mr. Powell, when did you first see the original of the chart which has been offered in evidence?

A. I don't remember.

Q. Do you think that it was some time after the contracts had been entered into?

A. I don't remember.

Q. Can you give us any approximate date when you first saw the chart?

A. I can't give you any approximate date whatever.

Q. Can you tell us when you first knew of the chart's existence?

A. No.

Q. You cannot even approximate the year when you first learned of the chart's existence?

A. Probably 1917.

Q. Do you remember ever having seen the chart prior to the hearing before Mr. Roberts?

A. I should say I did remember it, but I have no very clear recollection of it. I remember very distinctly Mr. Brown's making the chart at our meeting in Washington on December 18th.

Q. That was the reconstructed chart?

A. The reconstructed chart. I must have known he had the chart, but I have no particular recollection.

Q. You have no particular recollection of having seen the original of this chart?

A. No.

Q. You cannot recollect any occasion for having seen the chart?

A. No. When we came to our later negotiations, as I recall it, Mr. Brown had taken off the exact spots that represented his chart costs, and in our subsequent work we used those prices."

You so testified?

A. Yes.

Q. And that testimony is correct?

A. That is correct, and I believe what I have just given you is absolutely in accordance with it. If not I have not stated myself correctly in both cases.

MR. WOOD: Are you going to stop reading there.

MR. BROWN: No, I will read the rest.

BY MR. BROWN:

Q. Mr. Wood suggests that I read the rest, and I will ask you if you did not testify as follows:

"Q. So far as you can recall, subsequent to your use of those prices there was no occasion for Mr. Brown's ever having brought this original chart to your attention?

A. There might have been a dozen occasions. We might have talked about it and looked at it, and I might have forgotten completely, because there was no reason I knew then to remember it.

Q. If there have been such occasions, you have completely forgotten them?

A. Yes.

Q. Having completely forgotten those occasions, you of course completely forget the conversation or possible conversation referred to by Mr. Brown with you or Mr. Smith and Mr.

Schultz relating to the preliminary East Coast Cargo and tank ship lines referred to?

A. I have no recollection of any such conversation."

You so testified, did you not?

A. Yes.

Q. And that is correct?

A. That is correct?

Q. In other words, right on the subject of these erasures which appear on the chart and which have been the subject of Mr. Brown's testimony, you recollect no conversation with him relating to any such subject whatsoever; is that correct?

A. None whatever.

Q. And it appears at page 653 of the testimony before Mr. Roberts that you testified as follows:

"A. I haven't talked to him (meaning Brown) about that chart except as I heard it explained in this room, or to mention it for two minutes since 10 or 12 years past", and that is correct, is it not?

A. Yes.

Q. Do you remember whether or not you discussed this chart with anyone besides Mr. Brown in connection with the preparation for the hearing before Mr. Roberts?

A. Oh yes, it was discussed in the attorneys' office on several occasions.

Q. It was discussed in Mr. Cravath's office in the presence of yourself on several occasions?

A. Yes.

Q. The original chart?

A. Yes, the original chart is the only chart I know of.

Q. I mean the chart we are discussing which has been offered in evidence as Exhibit G-34½?

A. Yes.

Q. Either the original or a photostat?

A. The chart was discussed in that office. We were talking about the original chart that Mr. Brown had made at Bethlehem.

Q. That was fully discussed in advance of the hearing before Mr. Roberts in your presence?

A. In my presence.

Q. You knew of the chart?

A. I knew of its existence, how it had been made and I had heard some discussion but I was not interested in it, and I didn't pay much attention to it.

Q. Let us get clear what you have in mind. As I understand it, there were a number of discussions in preparation for the hearing before Mr. Roberts, these discussions taking place in Mr. Cravath's office in New York at which this chart was disqussed?

A. Yes.

Q. And that was in connection with the preparation of Bethlehem's case for the hearings before Mr. Roberts?

A. Yes.

Q. And, as I understand it, your recollection is, while not very distinct, that there was some discussions at these conferences with respect to the manner in which that chart had been prepared; is that correct?

A. Yes.

Q. But you were not interested in such discussions and therefore have no distinct recollection as to what was said?

A. No. The primary question involved was as to my recollection—it was my testimony being dis-

cussed and the primary chart involved was my recollection as to the chart.

Q. Were efforts made to refresh your recollection as to the manner in which that chart was prepared?

A. Counsel had not tried to influence my testimony in any way.

Q. I didn't mean that.

A. What do you mean.

Q. I mean, if you will permit me to finish, I am not attempting to say that anybody put anything in your mouth or anything of that sort, but what I want to find out is this; isn't it probable that in connection with Bethlehem's case, that you and Mr. Brown having conducted these negotiations apparently on the basis of this chart, that you would be interrogated as to your knowledge of the basis of the chart? Isn't that probable?

A. Not necessarily so. The primary question involved was whether I remember the re-constructed chart which was the one that was used in making up our prices. Now my recollection of the reconstructed chart was perfectly distinct. I will say Mr. Brown and I did not agree on the color paper it was on but after the number of years that had passed that did not seem to be essential. I thought it was on white paper and he thought it was on yellow and we both decided that it must have been on the yellow paper.

Q. But, as a matter of fact, you also disagreed with him as to how the curves had run on the reconstructed chart, didn't you?

A. Yes, and after the number of years I don't think that was essential.

Q. You disagreed with him in your recollection as

to how the curves ran on the reconstructed chart, as I understand it?

A. Yes, that was after 10 years, and the fact that we remembered as much as we did and as closely as we did was rather a matter of astonishment to me.

Q. And, as I understand it, it was your recollection that probably the re-constructed chart had the per ton curve running from possibly the righthand lower corner of the chart up towards the center of the chart rather than a line running from the lower lefthand corner of the chart up towards the top righthand corner of the chart; is that correct?

A. Of course that made no difference whatever as except to how you spotted your figures.

Q. I mean that was your recollection?

A. Yes, that happened to have been my recollection of it.

Q. And your recollection was very clear and distinct that there had been a reconstructed chart in Washington?

A. Yes.

Q. Or at least a chart in Washington?

A. Yes, definitely.

Q. And your recollection was not equally distinct with respect to the chart offered in evidence as G-54½?

A. I think we have covered that fully in my previous testimony.

Q. Now, in connection with the December 18th conference, as I understand it, you came from New York to attend that conference, did you not?

A. Yes.

Q. Do you remember when you arrived in Washington?

A. About 11 o'clock on the morning of December 18th.

Q. And you had just come from New York at that time?

A. Yes.

Q. And you had requested Mr. Brown to be at that conference and meet you in Washington, as I understand it?

A. Well, he met me there. I have no definite recollection of how it came about. I undoubtedly did tell him to meet me.

Q. In other words, on your arrival you met Mr. Brown at Washington?

A. Not necessarily on my arrival, but he joined me there. My diary here says: "Arrived about 11 met Willard, at Brown."

Q. You were coming down for the purpose of submitting this proposal, were you not?

A. Yes.

Q. And you had instructed Brown to meet you in Washington, as I understand, for that purpose?

A. Yes.

Q. So it is likely, is it not, that you advised Mr. Brown you were coming down and asked him to meet you in Washington?

A. I think it is probably so.

Q. You don't think it is likely that you would have waited until you got to Washington and then asked Mr. Brown to come down and attend the conference?

A. Well, it is not unlikely at all. If Mr. Brown was in Baltimore it is possible that I might have waited until my arrival in Washington and telegraphed him asking his to come to Washington. I have no recollection of it whatever.

Q. That is what I have in mind. You had a very particular purpose in going to Washington, to present this proposal to the Fleet Corporation and

Mr. Brown was a subordinate of yours and it is likely, as I suggest, that you instructed Mr. Brown before you left New York, or had someone instruct him, to meet you in Washington? Isn't that probable?

A. That is so and it is equally likely if I knew he was to be at Sparrows Point on that day that I waited until I got to Washington and telephoned him and then waited until he got over. I have no recollection whatever of how it was done.

Q. But you do have a recollection, do you not, that that conference of December 18th, lasted for several hours in the afternoon?

A. Yes.

Q. And that during the evening and night of December 18th, following that conference with the Fleet representatives, you and Mr. Brown spent several hours at the hotel Willard in preparing the data which you afterwards used in connection with your proposal of December 19th?

A. Yes.

Q. And then, as I understand it, you went to the Harlan Plant at Sparrows Point the following day?

A. At Wilmington.

Q. At Wilmington, and then you prepared the proposal of December 19th, and on the following day returned to Washington and handed the original to Mr. Radford and a copy to Mr. Piez?

A. Yes, that is correct.

Q. Now, with respect to the allowance of approximately $10 per dead weight ton which you added to the figures submitted to you by Mr. Brown in presenting your proposal of December 19th it appears that you testified as follows at the previous proceeding at pages 544 and 545 in answer to questions by Mr. Evans:

"Q. It would appear from the figures you quote on page 228 that your price on the 10,000-ton tanker is about $10 per ton in excess of the price as it figures out according to Brown's curves, using the average East and West Coast costs, as Mr. Brown testified you did. Can you today account for that difference of about $10 per ton?

A. Well, I can account for it, but as for giving a definite and absolute statement that I can remember just how we did it, I can't. The item of $10 of extra cost for extra tonnage is almost self-evident. I should say the chances are I would put it in as anyone would, going into a business deal."

THE WITNESS: That was afterwards corrected to $2.50. That is corrected later on in the testimony.

MR. BROWN: Changed it to $2.50.

MR. EVANS: And that extra tonnage, should that be corrected?

THE WITNESS: For extra cost of high priced steel.

BY MR. BROWN:

"Q. I should say the chances are I would put it in as anyone would, going into a business deal." You refer there to the balance of the $10.00?

A. Yes.

"Q. Do you mean by that that you deliberately increased a figure that you thought a proper figure, for trading purposes?

A. Just exactly what I mean. I had something in there for trading purposes."

Q. Is that correct?

A. Yes.

Q. And that was in answer to questions by Mr. Evans?

A. Yes.

Q. And at page 544 of the previous testimony it appears you testified as follows in answer to the following questions by Mr. Evans:

"Q. You could not today tell us how Brown arrived at his figures?

A. I could not.

Q. Did you have any other figures before you that you had gotten from your Estimating Department or Accounting Department?

A. No, none whatever.

Q. So that whatever figures you finally arrived at and quoted in this proposal, as I understand it, were based on figures that Brown furnished?

A. That is correct."

And that is correct, is it not?

A. Yes.

Q. Do you remember any reason for not submitting in your proposal of December 19th, 1917, the breakdown which Mr. Brown now says that he had made in connection with a tanker of 9100 tons similar to Hull 253? Would you like the question repeated?

A. I understand the question but I don't know what Mr. Brown said and it don't mean anything to me.

Q. I don't know whether you have already testified, but to make sure, at this conference of January 3rd, 1918, Admiral Bowles submitted no figures he made for these ships, did he?

A. The only figure that I remember, and I have

no very clear recollection about it, is that he wanted us to take some of these stock ships at $180 a ton. I have no definite recollection as to whether that came up at the conference of January 3rd or not.

Q. And that was a lump-sum price he was talking about?

A. Yes.

Q. And with respect to the ships subsequently included in the Half-savings contract, as I understand it, Admiral Bowles proposed no prices himself?

A. No, he never made any price himself. When I offered a figure he simply said too high.

Q. And that process of trading is described in your previous testimony as follows, at page 564, and I ask you if that correctly represents the situation. This is in answer to questions by Mr. Evans.

"Q. By what process of trading did you get down to those prices?

A. By the ordinary process between business men, trying to reach a meeting of prices."

THE WITNESS: That should be a meeting of minds.

BY MR. BROWN:

"Admiral Bowles reduced the price, and I made a concession. Then I made another price, and so on, until I finally stuck at a price below which I would not go, and he finally accepted.

Q. You were the only one who made any concessions?

A. Yes.

Q. He did not stop at any figure and make any concession?

A. No. The conceding was all on my part.

Q. When you had been Jewed-down to rock bottom prices, there you stuck, and Admiral Bowles finally met you?

A. Yes."

That is correct?

A. Yes.

MR. EVANS: I do not want to interfere with any proper cross examination but so far I have not observed any substantial contradiction between the testimony to which the attention of the witness has been directed and the testimony he gave here.

THE MASTER: It may be the reverse that Mr. Brown has in mind. It may be that Mr. Brown is showing how it agrees with the other testimony.

MR. BROWN: I just don't want to have any doubt about what took place there.

BY MR. BROWN:

Q. Mr. Piez had joined the Fleet Corporation in November, 1917, had he not?

A. I think that is correct. It was about that time. My first record of meeting him was November 28th, I believe.

Q. You knew who he was and what his business experience had been prior to that time?

A. Yes, very well.

Q. And you knew he was not a shipbuilding man, of course?

A. Oh, yes, I knew he was not.

Q. That had not been his line in any way?

A. No.

Q. He was not familiar with the shipbuilding business?

A. No, he had grown up in the Link Belt Company, was president of it at the time he went to the Fleet Corporation.

Q. About what time did he become General Manager? Towards the middle of December, 1917, was it not?

A. I think a little later than that. I think it was close to the first of January. Admiral Harris was General Manager, from the reference in my diary, and he was still at the Fleet Corporation very late in the month. I think it is just about the 1st of January that Mr. Piez became General Manager as well as vice president.

Q. There had been numerous general managers prior to his becoming such, had there not? There had been frequent changes?

A. There was three before Mr. Piez.

Q. And he was a tremendously busy man, was he not, during November and December of 1917 in trying to get this tremendous business of the Fleet Corporation organized?

A. Tremendously busy, yes.

Q. If anything, the business of the Fleet Corporation even exceeded the business of the Bethlehem, did it not?

A. Many times.

Q. And Mr. Piez was trying to do with the Fleet Corporation about what you were trying to do with the Shipbuilding organization, was he not?

A. Yes.

Q. In other words, he was literally swamped with work, during this period, was he not?

A. He was a very busy man.

Q. It would not have been possible for Mr. Piez at that time to burden himself with the details about the business of the Fleet Corporation, would it?

A. It depends on how important they were. If there was any important detail he certainly had time or could have taken time to burden himself with it. When it came to handling a question of handling wages and putting the East Coast yards on Navy Yard wages that was important enough for him to sit down and do it himself.

Q. But with respect to matters such as determining the propriety of shipbuilding estimates and costs he would require technical experience and advice, and he would not be in a position himself to sit down and talk about or investigate the propriety of such details?

A. If if was considered of sufficient importance he could have given it the time. That was up to him.

Q. Would you consider that a detail of the business?

A. No, not when the biggest contracts we had were to be let, that is not a detail of any business.

Q. At page 631 of your previous testimony it appears you testified as follows:

> "A. Mr. Piez was running an enormous business. He could not more be burdened with the details of the business than I could be burdened with the details of the much smaller business I was running."

That is correct, is it not?

A. Yes, I have just repeated that.

Q. Very well, sometimes we don't quite understand whether we agree on our inferences from your answers and am I correct in understanding that you do not think it was necessary for Mr. Piez to rely on his assistants for technical matters like estimates and costs?

A. I never made any such statement.

Q. Do you think it was?

A. Every executive must rely on his subordinates. It is always a question of the importance of the matter at issue. If the matter at issue is of sufficient importance the executive goes into it personally.

Q. I am going to ask you if you don't think it would be necessary for Mr. Piez to rely upon his subordinates in that organization for advice concerning such technical matters as shipbuilding construction and costs?

A. Why, of course, rely on them to a certain extent, not to the extent that his was not the final judgment when a matter of importance was presented to him. Every big executive has dozens of questions that come up to him from his subordinates that he O. K.'s without looking at it, but when an important matter comes up it is his responsibility to be sure the facts are presented and that the judgment is proper.

Q. When I say necessary for him to rely on them I mean rely on data and information supplied by his subordinates?

A. Yes. I would like to change that to he must be guided by but not necessarily rely on the data and facts.

Q. I am as anxious to make progress as you are, and you don't mean under those circumstances you would expect Mr. Piez to make a study of the shipbuilding construction situation and pick out costs of construction, if any were available and for him himself to determine the propriety of these prices when he had men like Admiral Bowles there to advise him in regard to these technical matters?

A. Mr. Piez was in a position to find out, with-

out a great deal of expenditure of time, what contracts had been awarded to other people, and whether the prices that we were presenting were out of line with what other people were showing or not. We had no knowledge whatever of what other people were doing at that time.

Q. I understand entirely what you have in mind, I think, and that is, that Mr. Piez, if he was presented with cost data such as I say indicated the technical advice of his subordinates, no matter how busy he was you think he ought to check up that price with other prices being awarded to other shipbuilders? Is that correct?

A. No, that is not correct at all. My point is this, that if Mr. Piez had wanted to sit in at meeting between Admiral Bowles and myself, he could have very quickly judged between us and have compared the figures we were submitting, where they were reasonable, and on his judgment, from such facts as we submitted to him, I was perfectly willing to accept contracts.

Q. But the only practical test Mr. Piez was in a position to make himself, as I understand it, would have been a comparison of the prices submitted by you with the prices being awarded to other shipbuilders for ships in a general nature similar; is that not so?

A. Well, he could have made that comparison without great difficulty.

Q. And that is the only comparison, so far as you know, just to have this understood, that he personally was in a position to make at that time, was it not?

A. Well, Mr. Brown, it depends entirely on how important he thought it was.

Q. May I make it clear that I am distinguishing

between what Mr. Piez could do himself and what he could do, in your opinion, with his subordinates. Does that make it clearer?

A. It depended entirely on how important he would think it was and how much time he was prepared to give to it. If he thought it was important enough he could make any investigation and any comparison that anybody wanted to make.

Q. As I understand it, your December 19 proposal was handed to Mr. Piez on December 20, at least a copy was handed to Mr. Piez on December 20?

A. Yes.

Q. And then, on the evening of December 20, you had your conversation with Messrs. McBride and Day, to which you referred in your direct examination?

A. Yes.

Q. And then, I think, you have previously testified, you spent a sleepless night and reached the conclusion that Admiral Bowles, or at least this is the effect of your testimony, that Admiral Bowles would never agree to the base prices which you had submitted, although the proposal of December 19th had practically just been submitted and although no representative of the Fleet Corporation had had an opportunity to consider it or to call you about it—is that correct?

A. No, that is not correct.

MR. EVANS: Are you reading this as his answer to questions at the last trial?

MR. BROWN: No.

THE MASTER: He was summarizing his conclusion as to the effect on Mr. Powell, as I understand it, of the general situation.

MR. BROWN: That is correct.

THE WITNESS: Mr. Brown, I covered this very exactly in my testimony. I can go over it all again and come pretty near telling much the same as I did before.

MR. BROWN: I would like to examine about more than you testified to before, and let me see if I can ask you questions which can be answered with more or less directness.

BY MR. BROWN:

Q. As I understand it, you submitted your proposal of December 19, to Messrs. Piez and Radford on December 20; is that correct?

A. Yes.

Q. That far we are all right?

A. Yes.

Q. Then you spent a sleepless night after your talk with Messrs. McBride & Day?

A. To begin with, I didn't say I spent a sleepless night. I said I spent some sleepless hours. Let us be accurate, if you want to be accurate.

Q. You spent some sleepless hours after your talk with McBride & Day. That is correct. You said in your previous testimony, "I spent some sleepless hours" and then, although the Fleet representatives had had no opportunity to consider your proposal of December 19th, or to call you with respect to its propriety, you came to the conclusion that Admiral Bowles would never agree to those figures and that you were not going to be an obstacle to the success of the United States in the World War and therefore you came with your offer to Mr. Piez the following day, did you not?

A. I didn't say that at all. Now that is just ex-

actly where we differ. I never said Admiral Bowles would never accept those figures. I did not believe I was going to negotiate a satisfactory contract with Admiral Bowles because of the strained personal relations between he and I and I did not want any delay and the quickest way was to put the matter right to Mr. Piez, which I did that day. There was no necessity for my waiting for Admiral Bowles, because I knew him too well and too long. It was only extra lost time in waiting for him.

Q. You had, as I understand it, before the Fleet Corporation had an opportunity to consider your proposal of December 19th, which you handed to it on December 20, gone to Mr. Piez on December 21, and made your offer; is that correct?

A. Yes. They had had 24 hours and that was a long time in those days if you were in a hurry.

Q. They had had 24 hours before you saw Mr. Piez the following day?

A. Well, did you suppose they had already considered it and had rejected your offer?

Q. I didn't know.

A. Did you ask?

Q. I think it would have been probable, if you thought that they had already considered your proposal—

A. I don't think it is material.

Q. Won't you leave some of the case to the counsel?

A. Yes.

Q. Don't you think it is probable if you thought the Fleet had already considered your proposal which you had submitted on December 20, by the time you saw Mr. Piez on December 21st, and had made this offer to him, you would have found out whether your proposal was acceptable or not?

A. Not under the conditions.

Q. Then, as I understand it, you went to Mr. Piez on December 21 and stated that while you would not accept a fixed price you would accept the contracts on the basis of any fee or any percentage of savings or any base price that Piez wanted to fix; is that correct?

A. That is just what I said.

Q. In other words, you were entirely willing to trust Mr. Piez's judgment in the matter, were you not?

A. I was.

Q. Although you were equally unwilling to trust to the judgment of any other representative of the Fleet Corporation, were you not?

A. That is true.

Q. And the relations between you and Mr. Piez at that time were very close, were they not?

A. I had met him probably four or five times altogether in his life and in my life. I suppose I might have spent as much as 6 hours with him altogether at that time.

Q. When did you first come in contact with him after he joined the Fleet Corporation?

A. I think it was November 21st at a meeting in Philadelphia in connection with labor rates where all of the shipbuilders were present, and that was the second time I had ever met him in my life.

Q. And the first time had been many years before that?

A. Yes.

Q. And there is no reason for you to suppose that Mr. Piez at that time did not have entire confidence in your business experience and ability as well as in your business integrity, was there?

A. Well if I did not think he had I never would have made that offer to him.

Q. Having complete confidence in Mr. Piez, did you go so far as to advise him that in this December 19 proposal which you handed to him that you had included this allowance of $10 per dead weight ton for trading purposes?

A. I did not.

Q. And when it came to the January 3rd, 1918, conference, as I understand it you handed to Mr. Piez that letter of that date in advance of the conference which took place with the Fleet officials?

A. Yes, I handed him the letter in the morning when we went to Admiral Bowles' office and arranged the afternoon meeting.

Q. So that Mr. Piez not only arranged the conference but knew all about its purpose, that is of January 3rd?

A. Yes.

Q. In other words, it was a conference at which you, Mr. Piez and everybody else that participated understood that it would be a meeting to agree upon terms and prices?

A. Yes.

Q. Just clarify one thing that I don't know whether I have straight in my own mind or not, isn't it a fact that no matter what the personal relations were between you and Admiral Bowles, that, so far as you know, he had no reason to suspect your business integrity?

A. Why, I don't think he had any reason in the world to suspect my business integrity but I think he would have taken a keen delight in sticking the harpoon in me and turning it and if he could have gotten these ships at less than cost he would have thought it was the smartest thing that he ever did.

Q. And you think his animosity, as I understand, was because you had been a competitor of his when you were connected with the Cramps Shipyard?

A. No, I can tell you the story. It started with the negotiation for a turbine the contract for which I had made at Cramps and afterwards Admiral Bowles thought it was covered by patents which we infringed and that resulted in some very bitter litigation that lasted for some time and that was the basis of the hard feeling that he started and that I afterwards carried on.

Q. Admiral Bowles, of course, was just as fully aware of the important emergencies that existed as you were, was he not?

A. Yes.

Q. It was not your thought that Admiral Bowles would jeopardize the interest of this country in connection with the war by allowing some personal feeling with you to interfere with his placing these contracts?

A. I think that Admiral Bowles had a very keen sense of his responsibility but he had the unfortunate characteristics that when his personal animosities were aroused I don't think his judgment was good. He would not have thought that he was holding up the Government's business when I would have thought that he was very badly. I very much regret to make a ny statement of that sort about a man who cannot an wer it. I have in certain ways a very high regard for Admiral Bowles, his ability and his personality and I am the last one that would want to show anything about a man that cannot answer.

Q. I can only say that I originally did not bring this question out and it is my duty to go into it, as I have done, and as I see my duty. Prior to the con-

ference of January 3rd you believed that Admiral Bowles was still going to object to the price even though you eventually took off the allowance of $10 per dead weight ton?

A. I thought it extremely probable he would.

Q. As long as it was not certain, can you explain why it was that you did not wait until after the conference of January 3rd, 1918, before you presented your letter to Mr. Piez submitting it to his judgment as to what the terms and prices should be?

A. Because I believed that every day saved in the awarding of that contract was a vital matter and I saw no reason for letting one day or two days or three days or more go by before I put the proposition up to them. As a matter of fact, I believe that putting that proposition up to Mr. Piez is the only reason the award of those contracts was settled on January 3rd and I believe that if I had not done it that it would have dragged along for a considerable longer period.

Q. Now, do I understand that you advised Admiral Bowles that you had made such a proposition to Mr. Piez?

A. No, but I think that I can state that Mr. Piez advised Admiral Bowles that I had made such a proposition.

Q. You cannot state it over my objection unless you know he did. Do you know that he did?

A. No.

MR. BROWN: I ask that that be stricken out.

THE MASTER: That can be stricken out.

BY MR. BROWN:

Q. In other words, so far as you know, you do not know whether Mr. Piez ever said a word either

to Admiral Bowles or Mr. Radford or anybody else with respect to your offer to him which appears in your letter of January 3rd, 1918?

A. I have no positive knowledge.

Q. Why didn't you tell Admiral Bowles that such an offer had been made?

A. There was no reason why I should tell Admiral Bowles that I had made that offer. It would only have made it more difficult to deal with him if I had to. I did not know whether Mr. Piez was going to step out of the situation and leave me to Admiral Bowles and I had trouble enough without making extra ones of my own.

Q. In other words, is it a fair statement that Mr. Piez had an understanding that you submit your proposal to Admiral Bowles and see what you could do with him and if you couldn't make out as well as you thought you would that you should submit the letter to Mr. Piez?

A. There was no such understanding. My letter states absolutely the situation. When I had handed that letter to Mr. Piez he took me into Admiral Bowles' office after a minute or two of conversation, in which no understanding whatever was mentioned and told Admiral Bowles to arrange for this afternoon conference and told him that he wanted to have this matter settled expeditiously.

Q. And so far as you know that is all that you said to Mr. Piez in that conference?

A. Absolutely.

Q. Can you explain why, with this letter in his pocket or in his hand, or wherever it was, he walked into this conference with Admiral Bowles and with Mr. Radford, called especially for the negotiation of these contracts and made absolutely no

mention of your having made such an offer to Admiral Bowles or anyone else?

A. No.

Q. You cannot explain it?

A. I don't see that requires any explanation. I negotiated until we reached a settlement, why I should then have injected that letter into the situation I cannot see.

Q. Did Mr. Piez ever make any effort to get you to reduce your prices either in your December 19th proposal or the prices agreed upon on January 3rd?

A. He didn't have to make any effort.

Q. I am asking you if he did make an effort?

A. No, he did not.

Q. After he got the recommendation from Admiral Bowles and from Mr. Radford, which had been offered in evidence, suggesting that while the urgency of the situation was such as to make it advisable to accept your figures they were nevertheless in their judgment too high, so far as your recollection goes he never attempted to get any reduction from you or anyone else connected with Bethlehem; is that correct?

A. That is correct.

Q. So that we don't have to go all over your testimony, you understood, did you not, when I discussed the letter of January 3rd, 1918, which you had written to Mr. Piez, making the offer which has been the subject of your testimony, that I referred to a letter which appears at page 256 of the Documentary Evidence, previously offered as Exhibit 116?

A. Yes.

MR. BROWN: If there is no objection, I will offer that letter now.

(Admitted without objection as Exhibit G-116.)

BY MR. BROWN:

Q. And there is no question, as I understand it, that when I have been talking about an offer and a letter of January 3rd we have been referring to the letter offered as Exhibit G-116?

A. That is my understanding.

Q. It appears from the letter of January 5, addressed by Mr. Piez to the Shipbuilding Corporation, which letter appears at page 259 of the Concession of Documentary Evidence that Mr. Piez there stated: "Referring to your proposal covering building of additional tonnage, dated December 19th, 1917, and so forth", and then he goes on to describe what will be done in connection with the construction at the Union plant, and refers to five tank vessels of about 10,100 tons dead weight, for which drafts of contracts are being prepared, and then that letter goes on to state: "It is our understanding that your Mr. Powell is on his way to the Union plant; that he will promptly advise us if you are able to take five additional similar vessels under the above conditions with an extension of plan," and so forth. That expresses the understanding upon which the conference of January 3rd adjourned, does it not?

A. Yes, so far as that particular question is concerned.

Q. In other words, to make clear what I am driving at, it was agreed at the conference of January

3rd that the Union plant would undertake the construction of five tank vessels of about 10,100 tons dead weight?

A. No, that I was to see whether they could, that I was on my way west to see whether they could.

Q. Let me finish my question, that the Union plant would undertake the construction of five tank vessels of about 10,100 tons dead weight and that you were going out to the Union plant and would promptly advise the Fleet if you were able to take on five additional similar ships; is that correct?

A. Yes.

Q. And that was the understanding upon which the conference of January 3, 1918, adjourned?

A. Yes.

Q. In view of that fact can you explain why in the first paragraph of this letter of January 3, 1918, which has been offered in evidence as G-116 you stated in your letter to Mr. Piez, "Referring to this company's letter of the 19th ultimo, referring to the subject of additional tonnage I further state the situation at the Union plant, San Francisco, California, is such it will be practicable to undertake the construction of ten tank vessels instead of five", and so forth?

Can you explain that statement in that letter?

A. Explain what? I made a definite statement there and then I got on the train to go to San Francisco to be sure that we could do it.

Q. That is all the explanation you have as to that?

A. That is all the explanation I have.

Q. In other words the conference of January 3rd adjourned with the understanding that while the Union would undertake the construction of five tankers, and that you would go west to determine

whether you could take on an additional five, you had already informed Mr. Piez in that conference of January 3rd that the Union plant was prepared to take on the full 10 tankers; is that correct?

A. That is correct, and it is quite evident from the letter and the text and in our conference we decided that we were not between us very sure that Union was not biting off more than it could chew and as I was on my way to Union it was my thought to wait until I looked over the situation on the ground.

Q. You don't think there is the possibility that the date of that letter of January 3rd may have been wrong, do you?

A. Not the slightest in the world.

Q. You don't think that possibly it may have been January 13th and sent from San Francisco to Mr. Piez?

A. There is not the slightest chance in the world that is so.

Q. You have a very distinct recollection that you handed that letter to Mr. Piez in advance of the conference of January 3rd.?

A. That is one of the things that I have done in my life that I will never forget.

Q. As I understand it the Destroyer contracts of December 6th, 1917, were the first half-savings contract which were made by the Bethlehem Company in connection with this war work, were they not, or in connection with any war work?

A. Yes.

(Recess from 1 o'clock to 2 o'clock, p. m.)

J. W. POWELL, cross examination resumed.

BY MR. BROWN:

Q. Mr. Powell, it appears at page 586 of the previous proceeding before Mr. Roberts that you testified as follows, in answer to my question: "Q. The principles and the purposes of the half savings form of contract, and the reasons for the adoption of that form of contract were exactly the same in connection with the Fleet contracts as they had been in connection with the Navy contracts, were they not? A. Yes." That is correct, is it not?

A. Yes.

Q. As I understand it, the base prices and fixed fees with respect to the destroyer contracts of December 6, 1917, which have been offered in evidence, were agreed upon at a conference with the Navy representatives on October 8, 1917; is that correct? That is the date you gave at the last proceeding, as I remember it.

A. Yes—no, wait a minute.

Q. No, I will correct that. That is the date which it appears in an exhibit offered in evidence as Exhibit B-5 at the last proceeding, which is Mr. Grace's letter of June 21st, addressed to the Secretary of the Navy. It was approximately at that time, in other words? That is all I want to know?

A. Monday, October 8th, is correct.

Q. And is it your recollection that Admirals Griffin and Taylor and the Secretary of the Navy represented the Navy at that conference?

A. Yes.

Q. And, as I understand it, at that conference you submitted an estimate of $1,500,000 as representing the estimated cost of each of the destroyers,

and also asked for a fixed fee of $150,000 per ship; is that correct?

A. I did not submit any estimate, Mr. Brown. I proposed that that base price be agreed to, but no estimate was submitted. As a matter of fact, there never was any estimate made on those destroyers.

Q. Is the following quotation from your testimony at page 561 of the record referring to that conference with the Navy officials correct: "When the negotiations for the fee and the base cost were carried on, I asked for a fee of $150,000 for each destroyer, and that the base price be fixed at $1,500,000"? Is that correct?

A. That is correct.

Q. Then, as I understand it, after a considerable argument the fixed fee was fixed at the amount of $135,000 for each destroyer; is that correct?

A. Yes.

Q. And then after more discussion, as I understand it, you held out for $1,500,000 as the base price of the destroyers; is that correct?

A. That is correct.

Q. And is it your recollection that Admiral Taylor then said to Admiral Griffin, in effect, "They cannot possibly build them for a million and a half. You are not giving them anything"? Is that correct?

A. That is correct.

Q. And that the Secretary of the Navy then said, "All right, if that is your judgment, we will fix the base price at a million and a half," is that correct?

A. That is correct.

Q. And in saying "All right, if that is your judgment," as I understand it, the Secretary was refer-

ring to the opinion expressed by Admiral Taylor to which you have referred?

A. Yes.

Q. And, as I understand it, the other shipbuilders who were also present expressed the opinion that it would be impossible for Bethlehem to build the destroyers for less than the base price of $1,500,000, plus additions for changes and extras and wage increases; is that correct?

A. My recollection is that they did not think there was much, if any, chance of a saving.

Q. All the way through that conference, in other words, the shipbuilders, with respect to this base price of $1,500,000, thought that Bethlehem was trying to do the impossible; is that correct?

A. I think that is correct.

Q. Trying to summarize your testimony on this subject before the Committee of Commerce, without putting in extensive quotations as we did before, it is true, is it not, that in a proceeding before the Committee on Commerce of the United States Senate, which took place during February, 1918, you were testifying with respect to the destroyer contracts in controversy and the purpose and object of the half savings form of contract?

A. Among other things. It was general testimony that bore on the progress of the shipbuilding program.

Q. And, in explaining the basis of the price named in the form of contract adopted in connection with the destroyer contracts, it is correct, is it not, that in answer to the following question by Senator Vardaman you testified as follows: "Senator Vardaman: In the estimates you make you estimate that as about the cost of the ship? Mr. Powell: Yes, sir".?

A. Will you read the last?

Q. "Senator Vardaman: With the labor and material at the price today? Mr. Powell: Yes." You so testified, did you not?

A. May I see the rest of it? Yes, I so testified. I would like to see the context, though, to see how I qualified it.

Q. Yes. That was referred to in the previous proceeding also, Mr. Powell. All right?

A. Yes.

MR. BROWN: I would like to note on the record that this volume referring to the hearings before the Committee on Commerce of the United States Senate was referred to in the previous proceeding as Exhibit G-185. I am not offering it at the present time but it is referred to in the testimony and I would like to have it identified.

THE MASTER: It will carry the same identification number here.

BY MR. BROWN:

Q. It also appears at page 647 of your previous testimony as follows, in answer to my questions: "Q. According to your testimony in this proceeding, Exhibit G-185, with respect to the November (the word "November" should be "destroyer") contracts, and applying such testimony to the Fleet contracts, as I understand it, if Bethlehem had been required to name a lump-sum price for the contract ships, any price acceptable to Bethlehem would have been very substantially in excess of the price agreed upon in the base price contracts? A. It certainly would. We would not have accepted a fixed price for those destroyers. Q. The same thing applies to

the Fleet contract ships? A. Yes. Q. In connection with the destroyer contracts, you stated to the Senate Committee that if you had been forced to accept them on a lump-sum basis, it would have been approximately two million dollars instead of being $1,500,000 plus a fee of $135,000, or a total of $1,635,000? A. That was the same thing as telling them we would not have accepted a fixed price contract, because the Navy Department never in the world would have paid us $2,000,000." You so testified, did you not?

A. Yes.

Q. And that is correct— I mean your testimony?

A. Yes.

Q. With respect to the contracts now in controversy, namely, the Fleet contracts in issue in this proceeding, it appears that you testified as follows at page 654 of your previous testimony: "The Witness: I would not have taken the contracts on a fixed price basis. I so stated at conference after conference. That was one thing we would not do. Under those circumstances, I can't tell you what basis of fixed price they might have offered which might have caused me to change my judgment, but it would have been a whale of a big price." You so testified, did you not?

A. That is correct.

Q. And in referring to a price which "they" might have offered, you of course referred to the Fleet Corporation?

A. Yes.

Q. Again on the same subject, it appears that you testified as follows on pages 656 and 657 of your previous testimony, starting at the last question on page 656: "Q. Your estimates for lump-

sum contracts would have been entirely different from estimates for the purposes of determining the base price on the half-saving form of contract? A. I would not have taken it. Q. Your estimates would have been entirely different? A. I would not have made any estimates. If they had finally offered me a price so big that I could not help taking it, I would have said yes, probably." You so testified in answer to my question, did you not?

A. Yes.

Q. On the same subject, at pages 657 and 658 of the previous proceeding, it appears that you testified as follows in answer to my questions, beginning with the last question on the page: "Q. According to your information, were the estimated costs proposed by Bethlehem in the contracts in controversy intended by it to be the equivalent of lump-sum contract figures for like vessels?" A. They certainly were not under the conditions as they then existed." You so testified?

A. Correct.

Q. And it appears at pages 649 and 650 of your previous testimony that you testified as follows in answer to my questions: "Q. What you have said with respect to the increase in cost in connection with a lump-sum contract would have been because under that form of contract Bethlehem would have been required to assume the risk of possible contingencies? A. Under the fixed form of contract Bethlehem would have been required to assume probably all costs. The Fleet Corporation might have assumed the increase in wages. In fact, I think they did with some, some fixed price contract builders. They might have assumed other increased costs. Q. The necessity of taking care of possible contin-

gencies in the lump-sum form of contract is the reason for your statement in your letter of December 13th that it was impossible to submit fixed prices except upon a basis so far above estimated cost that any figure acceptable to Bethlehem would not be acceptable to the Fleet Corporation? A. Yes. Any figure that would have been acceptable to Bethlehem as taking account of the possible contingencies I knew would not be acceptable to the Emergency Fleet Corporation. Q. That was because of the necessity for taking care of possible contingencies under a lump-sum form of contract? A. Yes." You so testified, did you not?

A. Yes.

Q. Prior to the negotiations relating to the contracts in controversy, as I understand it, and commencing probably some time during 1915, inefficiency of labor, as compared with the pre-war efficiency, had been one of the principal factors in increasing cost of production, had it not?

A. I think you start a little early. I should say that we began to feel that in 1916, rather than in 1915.

Q. From some time during 1916 on that would be so, would it not?

A. That was so.

Q. The enormous increase in the labor forces commencing some time during 1916 and running on during the balance of that year and up to, we will say, the time of the negotiations in controversy, had been one of the principal causes for increasing inefficiency during that period, had it not?

A. That had been a cause. The more important cause during that particular period was that new shipyards were springing up and were taking away

our skilled labor. That was a more important cause during that particular period.

Q. And they were taking them away because of offering higher wage inducements, were they not?

A. Exactly.

Q. In other words, there was no uniform wage scale in existence at the various plants on either Coast?

A. No.

Q. It appears in your previous testimony, if I may be permitted to summarize it—it can be corrected by your counsel—that at Fore River the labor force of 4200 men employed on May 1, 1917, had increased to approximately 8,025 on September 8, 1917. If you have any doubt about that, I will refer to where I got that from in your testimony, pages 633 and 4. That is approximately correct?

A. I have no doubt that is approximately correct.

MR. BROWN: I have no objection to your correcting it if the figures are wrong.

MR. EVANS: If there is any question about it, we will be glad to see what the facts are.

BY MR. BROWN:

Q. Those forces at Fore River, as I understand your previous testimony, had increased to somewhere in the neighborhood of 11,000 on December 6, 1917, and to approximately 14,000 on January 1, 1919?

A. That is approximately correct.

Q. And this increase in labor force which I have referred to at Fore River, as well as the increase during the similar period at your other plants, whatever that increase was, represented, as I understand

it, green labor, entirely inexperienced in shipbuilding?

A. Yes, that is true.

Q. And it is true, is it not, that prior to November, 1917, there had been no governmental regulation of the wages of shipyard labor, and no uniformity as to wage scales in the various plants?

A. Practically true. At Fore River we went on the Navy Yard schedule of wages in August, 1917.

Q. For Navy work?

A. No, we put the whole Yard on it. You could not put half the Yard on one scale and half on another.

Q. When was that, in August?

A. In August, 1917—the agreement was made in August. It probably was September before we got the wages in effect.

Q. And during the period referred to, namely, during 1916, or part of 1916 and prior to the negotiations in controversy, there had been strikes and labor troubles at your various plants, had there not?

A. Of course, I had no connection with the other plants except Fore River. We had had some strikes and a great deal of difficulty with our labor.

Q. In your previous testimony at page 636 it appears that you testified as follows: "Q. There were also considerable labor troubles at the Bethleheni plants during 1917, were there not? A. Yes."?

A. Yes, that answer is correct.

Q. Then the following question: "Q. You had strikes at some of the plants which tied up operations for a period of several months, did you not? A. Yes." That is correct, is it not?

A. That is correct.

Q. And there was also a labor shortage during 1917; that is correct, is it not?

A. Yes.

Q. You testified to the same effect in the previous proceeding?

A. Yes.

Q. And that labor shortage during the period in question had prevented your various plants from being operated to capacity, had it not?

A. Yes.

Q. And the strikes, as I would assume, resulted from controversies as to wage rates and labor conditions, did they not?

A. Yes. There may have been in some of the yards also the union question came up, but not at Fore River.

Q. During that period it is a fact, is it not, that Bethlehem had no effective means of controlling labor, or inducing workmen to exert their best efforts in connection with the construction, on account of the confused—

A. Are you quoting from my testimony?

Q. I think you have that somewhere here. No, I had no quotation.

A. I should say, in a general way, that we did not have the effective means of controlling labor through incentive methods and through control of wages that we afterwards achieved under the War Industry Board.

Q. What I am trying to do is to summarize your testimony to show that the cause of the conflicting wage scales in the new Yards and the various things that have been referred to was that labor was a good deal upset during that period and there was really no effective way of controlling it?

A. That is entirely true. The things we could have done in raising wages would have ruined us on our fixed price contracts.

Q. And during the period to which we have been referring it is a fact, is it not, that chaotic transportation conditions had prevailed with respect to your ability to obtain shipping materials?

A. Of course, they were not so bad early in 1917, as I recall it, but they were getting continuously worse. The breakdown of the railway situation occurred, of course, after the Government took over the operation of the railroads and during the terribly severe winter of 1917-1918. That was when the railroad transportation completely broke down.

Q. Had not transportation conditions been very much upset during the year 1917?

A. In the early part of the year they were not as good as they might be, but they were not too bad. It was only after the War and later in the year that they became so terribly bad.

Q. And in arranging for the production and delivery of materials during that period to which we have been referring, Bethlehem had been on a competitive basis with other shipbuilders, had it not?

A. Yes.

Q. Then after the Fleet Corporation became interested in building ships, as I understand the situation, the Fleet Corporation and the United States, through its various agencies such as the War Industries Board, lent every possible assistance to the shipbuilders to build ships which were so urgently required by the Government, did they not?

A. I am just trying to get a proper picture. The War Industry Board considered the requirements of the situation as a whole. The Army's needs were

first, and they had the first call on anything that they required. Ships took a very high rating, and in accordance with that rating the War Industry Board allocated material to the shipbuilders' needs.

Q. Then some time in November, 1917, as I understand it, the Labor Boards, whatever the name was, that were established by the Government –

A. The War Industry Board.

Q. Well, the Labor Boards?

A. I did not mean that. It was the Shipbuilding Labor Adjustment Board.

Q. That Board began to take jurisdiction of wage rates and conditions of employment, did it not, in the effort to stabilize wage rates throughout the East Coast plants as well as the West Coast plants?

A. My recollection is that that Board was formed in the summer of 1917, that its first real active attempt to control wages was on the West Coast in December of 1917, and from that time on it rapidly took entire jurisdiction of wages in the shipbuilding industry.

Q. But in a general way it was contemplated that that was their object at that time, was it not? –

A. Yes.

Q. That they were endeavoring to stabilize wage conditions and wage rates at the various Yards, so as to enable the plants to operate most efficiently?

A. Oh, yes, that was their endeavor.

Q. I think it has already been covered, but of course it was understood by everyone that ships were very urgently required by the Government at that time? In fact, you have covered that already?

A. Yes.

Q. In stabilizing the wage rates and making the

conditions of labor satisfactory to labor, one of the principal inducements for labor going from one plant to another was removed, was it not?

A. Yes.

Q. As I understand it, the Government had also taken measures to exempt shipyard labor from the Draft, had they not?

A. Well, only certain classes of skilled shipyard labor.

Q. I do not know exactly how they operated.

A. That is, a man who was an ordinary laborer in a shipyard, who could be replaced by anybody who could lift a ten-pound weight, was not exempt. A man who was a skilled mechanic was exempt.

Q. Skilled or semi-skilled labor I suppose were the classes covered by the exemption?

A. Yes. We could get away with a good deal on the basis that they were skilled, too.

Q. And due to such exemption, or other causes probably in conjunction with that cause, it is a fact, is it not, that probably from 65 to 70 per cent. of Bethlehem's total labor force by February 1, 1918, consisted of men within the Draft ages?

A. I should think so.

Q. And there was also a Service Department established by the Fleet Corporation, was there not, for the purpose of enabling the shipbuilders to obtain an adequate supply of labor?

A. For that and for other purposes, the building up of the morale of labor.

Q. In each of the contracts—I think I am right in stating this; it is certainly in practically all of them, though I don't know whether there might be one or two exceptions—there are the following provisions, which appear as Paragraph XII of Con-

tract No. 177, which is in the list of exhibits filed as a part of the pleadings in the case, at page 138: "The owner will, in its discretion"—the owner being the United States or the Fleet Corporation, I take it, we will say the Fleet Corporation—"the owner will, in its discretion, use its influence and such powers as it may have by law to assist the contractor (which was Bethlehem) to secure with the utmost practicable expedition and at the minimum cost consistent with the existing conditions, the facilities, utilities, parts, materials and supplies required for the work under this contract, and will, in its discretion, also use its influence and powers to secure for the contractor rail and/or preferential transportation from any and all railroad companies and public service companies for workmen, employees, materials, parts and supplies required for the work under this contract." That, in general, was what was contemplated, was it not, at the time of these negotiations?

A. Yes.

Q. And the same with respect to labor, Paragraph X of the same contract reads: "The contractor will comply with all instructions not contrary to law as to wages or conditions of employment of labor on this contract given to it in writing by the owner. The owner, in its discretion, will give such assistance as shall be within its power in securing and retaining the labor necessary for the work under this contract. The contractor will promptly notify the owner of any labor difficulties. That, in a general way, was what was contemplated at the time of the contracts?

A. Yes.

Q. And it is a fact, is it not, that you testified

as follows in the previous proceeding, commencing at page 651, just a little below the middle of the page: "Q. (By me) It is a fact, is it not, in connection with the Navy contracts of December 6, 1917, in which the half-saving form of contract was adopted, there had been no allowance made for anticipated decrease in the efficiency of labor during the construction period of those destroyers? A. Well, that is a rather difficult question to answer. I have gone in a number of times to the subject of the way that estimate for the destroyers was arrived at. The estimate was a figure which we had to shoot at that in my judgment gave us a reasonable profit or a chance of making a substantial saving. To make that saving, we had to operate more efficiently than what we might say was average efficiency under conditions that then existed. If we were going to make that saving, we had to overcome any increased cost due to decreased efficiency, and increase efficiency beyond what it was at that time. Q. In other words, you contemplated under the destroyer contracts that there would be a possible saving on account of your ability to make labor more efficient during the period of construction of those destroyers than it had been during the period of 1917 when labor conditions were more confused and upset? A. Labor conditions were not more confused and upset in 1917, but I believed we could get control of our labor and so handle it as to materially improve the situation unless conditions broke more seriously than they did. If the Army had doubled, if strikes had broken out, if labor troubles increased—if all those things had happened, labor might have got completely out of hand. We were just taking a plain chance. Q. In view of the methods that had been

developed by you in connection with training labor, and the different aids that you had with respect to labor, such as the exemption clause and standardization of wages, you contemplated that it would be possible for the Bethlehem Company to make a saving in connection with the destroyer contracts by making labor in connection with such contracts more efficient than it had been? A. I intended to work my head off and have all my managers work their heads off to make labor more efficient. I believed we had outlined methods that if things did not go too badly would result in increased efficiency, but what was really going to happen I didn't know any more than anybody else." You testified to that effect, did you?

A. Yes.

Q. And that testimony is equally applicable to these contracts now in controversy, is it not?

A. Yes.

Q. As a matter of fact, Bethlehem succeeded, as I understand it, in its efforts to increase the efficiency of labor at its various shipyards, with the exception possibly of the Harlan plant, from early in the year 1918, did it not?

A. We began to get better control of our labor from early in 1918, and we did improve the efficiency of our labor at all of the plants, and improved it some at Harlan, although less at Harlan than at other plants.

Q. Mr. Powell, I am going to use an expression that you used in the previous proceeding. Did Mr. Brown think you were crazy in believing that it would be possible for Bethlehem to make any savings on the basis of the prices that were finally

agreed on in connection with these contracts in controversy?

A. Yes, sir, and did not mind telling me so, either.

Q. It appears at page 552 of your previous testimony, in answer to questions by Mr. Evans, that you testified as follows: "Q. You say that Mr. Brown thought you were crazy? A. Yes, sir. Q. You thought that by good management and good luck there was a possible saving here under this form of contract? A. Yes. Q. And it was your job to get it out? A. It was my job to get it out. Q. He could not see it that way? A. He could not." You so testified, did you not?

A. Yes.

Q. At the previous proceeding, in answer to questions by Mr. Evans, it appears that you testified—I am referring to pages 549 and 550—that in submitting these estimates to the Fleet Corporation you figured that there was a probability of effecting a saving which would be sufficient to handle or to take care of war and excess profits taxes amounting to sixty per cent., and still net the Bethlehem Company approximately ten per cent. of its estimated base prices, did you not?

A. I do not believe I stated it just that way, Mr. Brown.

Q. Did you intend to make that statement? I was doubtful about it myself.

A. Not exactly in that form, because I think, if I recollect correctly, I said—

Q. May I read you what you said and then you can comment on it?

A. Yes.

Q. (Page 549) "I figured that if Bethlehem got

fairly reasonable breaks, if things did not go against us very badly, that by exercising exceptionally good management, by using all of the expedients I believed were possible at that time in training labor and training a supervisory force, in offering special incentives to our supervisory force, that we could improve on conditions such as we allowed in getting this average estimated price, to such an extent that we could cut these costs below this estimated cost to the place where our half of the savings would wipe out the excess profit taxes. At that time the excess profit tax was, I think, around sixty per cent. and we had enough work in our yards as they were then situated so that any additional work we took fell completely in the excess profit bracket, so that I had to figure on a saving that would handle that tax."

A. Yes.

Q. Is that correct?

A. That is exactly correct.

Q. Then you figured, as I understand it, on a saving which would be sufficient to enable the Bethlehem Company to pay these taxes amounting to sixty per cent. and still net Bethlehem its fixed fee named in the various contracts; is that correct?

A. That is correct. I want to simply amplify that by saying that I never sat down with a pencil and paper and made any detailed figures to see that that particular result was going to be arrived at. When I used the expression "figured" I simply meant that I roughly estimated that that is about where we might come out if we got the best break possible.

Q. That is understood. Just for purposes of illustration, in order to make it clear to the Master,

we will assume, if you will be so good as to do it, that we are dealing with a ship the estimated cost or base price of which is $2,000,000, and there is a fixed fee of $200,000, or approximately 10 per cent. of the estimated cost. Now, as I understand it, in the case of such a ship you figured that there was a reasonable probability of making a sufficient saving to take care of War and Excess Profit Taxes amounting to sixty per cent. of earnings, and net Bethlehem the fixed fee of $200,000? You have so testified, have you not, just now?

A. Yes.

Q. Now in such a case, in order to net Bethlehem $200,000, in other words the fixed fee, after paying taxes amounting to sixty per cent. of net earnings, Bethlehem's total profit would necessarily be $500,000, would it not?

A. I guess if I had ever calculated it out that way I would not have thought I was going to get the full excess profit tax.

Q. Just for the purposes of this illustration, would you be good enough to follow me?

A. I follow that.

Q. And that is correct, is it not?

A. I think that is about correct.

Q. In other words, if Bethlehem's share of the earnings and its fixed fee were $500,000, sixty per cent. of $500,000 would be $300,000, leaving the fixed fee of $200,000 which you expected to get?

A. I would have required on that basis a saving of nearly $700,000, which was far in excess of anything we ever dreamed of.

THE MASTER: I do not quite understand your formula. Do you figure the $500,000 a-

the saving or the combination of saving and fixed fee?

MR. BROWN: Combination of saving and fixed fee.

THE MASTER: So that the saving would be $300,000?

MR. BROWN: The saving under that illustration would be $300,000—their share of the saving.

BY MR. BROWN:

Q. In order to make Bethlehem's share of the saving in such a case $300,000, the total saving would have to be $600,000, would it not?

A. That is about right, arithmetically.

Q. So that in such a contract, as I understand it, you figured on the reasonable probability of total savings being in the amount of $600,000, did you not?

A. Never.

Q. What?

A. Never. I told you that I never made any estimate, never took a piece of paper and pencil and figured it out; that what I wanted to do was to get as much saving, which at the outside might have been 25 per cent., from our estimate, half of which would have gone toward paying off these excess profit taxes. I do not remember that I knew exactly what the excess profit taxes were. I certainly did not know exactly how they would be applied to the Bethlehem situation, because they afterwards were applied quite differently than anything I could have supposed at that time, and my idea was to cut into this excess profits tax to the maximum by making all the saving that we practically could. I dis-

tinctly do not want to convey any impression that I ever sat down and said "We are going to make just so much saving here that it will wipe out a sixty per cent, excess profits tax," because I did not do it.

Q. Mr. Powell, I do not want to press you unduly on the subject, but it would have been a very simple matter to determine, by a very simple mathematical computation—and I might say that otherwise I would not have attempted it—to show what you would have had to make in the way of savings in order to net your company its fixed fee of $200,000 under the illustration that I am giving you, would it not?

A. Oh, yes, it would be a very simple calculation if I had taken the trouble to make it.

Q. And the example I have referred to was the case, or a similar case, in which Mr. Harry Brown advised you that, in his opinion, you were crazy in believing that you could effect any saving whatsoever against base prices; is that correct?

A. Yes.

Q. As a matter of fact, what War and Excess Profits Taxes has Bethlehem paid on the amount of profits which it has already received under these contracts in controversy?

A. I have not the slightest idea.

Q. Haven't you the slightest idea?

A. No.

Q. Bethlehem, of course, files consolidated returns for all the companies?

A. Yes.

Q. And did during that period, did it not?

A. Yes.

Q. In other words, when you were negotiating

you knew a consolidated return would probably be filed, as it was in the past, with respect to these companies, did you not?

A. No, my recollection is that that tax bill that gave that right was passed at a later date.

Q. I am wrong about when the consolidated return was filed.

A. That came afterwards and changed the situation very materially.

Q. You never have been advised as to what taxes Bethlehem actually has been required to pay in connection with the profits already received in these transactions?

A. No.

Q. It appears that you testified at the previous proceeding, beginning at page 551, in answer to Mr. Evans' question, as follows: "Q. If the War had continued during the entire construction program, what effect, in your opinion, would that have had on your savings? A. The savings would have been quite different and much less than they were, Q. Do you think there would have been any savings? A. Yes; I do—will you strike that out? Mr. Brown: Do we have to have that stricken out? Mr. Evans: No, leave it in, and then correct it. The Witness: Please correct my answer. I think, if the War had continued, there were so many factors that might have come into the situation that any answer I might make to that question would be purely a guess." You so testified?

A. Yes.

BY THE MASTER:

Q. The Equity Rules require the Master to ask questions himself, and I have been derelict in your case. I am going to perform my duties, I hope

rather shortly, but two or three questions I would like to put to you concerning several matters in my mind. In the first place, as I understand it, in reference to this half-savings contract, you are the originator of the idea?

A. So far as applied to shipbuilding contracts, yes. It is nothing new in other forms of contracting.

Q. And the first time that you applied that form of contract was with the 85 destroyers for the Navy?

A. That is correct.

Q. And you discussed the form of contract with Mr. Piez, I understood you to say?

A. Yes.

Q. And he was in favor of it because of the incentive feature?

A. Of the incentive feature and of the difficulty in making a fixed price contract that would be equitable both to the Fleet Corporation and to the contractor, because of the numerous unforeseeable circumstances that would surround the performance of the contract.

Q. That only applies to the fixed price contract?

A. Yes.

Q. The pliability of the cost-plus contract, however, would cover that feature?

A. Oh, yes.

Q. So that the half-savings contract added another feature to the cost-plus by giving an incentive?

A. Giving an incentive to perform as cheaply and as efficiently as practical.

Q. And carried with it the expectation that a benefit would arise by reason of those facts to both parties?

A. Yes.

Q. In discussing it with Mr. Piez, did you dis-

cuss with him what would be a fair basis for the saving in making the estimate, on what percentage the estimate should be made to have a fair base for that incentive?

A. I have no recollection of it, and I very much doubt that I ever went into that detail with him. We never reached that point, because we finally did arrive at an agreement with Admiral Bowles before we ever got to a place where that would have been necessary.

Q. I thought possibly in discussing the matter with Mr. Piez you had demonstrated to him the wisdom of at least a certain percentage being in there as the incentive.

A. No, I think not. What I demonstrated to him, in accordance with my recollection—and I have no distinct recollection of any particular date when this was done—was that the general form of contract was the fairest form that we could find, under the conditions, to both parties, and that there must be enough probability of a reasonable saving in the base price that was fixed, or otherwise there would be no incentive. That is, if I went away from the Emergency Fleet feeling, "Well, I will get my fee anyhow, but there is no possibility of making a saving", one of the principal advantages of that form of contract was lost. If I went away with the feeling, "Well, now, there are a hundred things that may happen and I won't get a saving, but if I do the best I can and my people do the best they can and if we get the breaks, then we will make a saving, and we will make enough of a saving to make it worth while".

Q. And in order to make it worth while it had to be something reasonably substantial?

A. It had to be reasonably substantial.

Q. Because, in order for your organization to get the benefit of it, you had to hold out to them something in the nature of a dollars and cents proposition?

A. Exactly.

Q. And that was based on your estimate of what your savings would be on all your contracts?

A. Yes.

Q. I understood you to say yesterday that with an honest and efficient estimator there was a possible variance from the mean of 50 per cent. up and 25 per cent. down?

A. Under the conditions that existed in 1917, yes.

Q. So that, with that variation in mind, in order to be reasonably sure of a saving you would have to add 50 per cent., would you not, to the expected cost of the ships?

A. Well, yes, if you were going to fix it so you were not taking any of the risk at all, but of course we never expected to be put in that position. I recognized at all times that if things went against us we would never get a nickel of saving and we might very substantially overrun those base figures. But it was war times and we were taking so many chances that one more didn't make much difference, and after all I was vitally interested in getting home to my people the fact that we were working for ourselves, so I could get the best there was out of them. Now if they thought there was going to be a saving, whether it ever happened or not, the ships would be so far along before any of us knew that I would have gotten most of the benefit out of it, whether we ever got any money out of it or not—

I mean the benefit so far as performing the work was concerned.

Q. Still, you had to deal with your own organization fairly and you had to give them some reasonable basis for your statement?

A. Absolutely; I must be convinced in my own mind that I was making a true statement to them, or a great part of the effect of it would have been lost.

Q. Unquestionably, so that you have had some honest basis in your own mind for the fact that there was to be a saving?

A. Yes.

Q. And in order to be anywhere near safe you could not go below say 25 percent., that is, your differential must be at least 25 per cent. in the base figure above what you expected the boats to cost?

A. Let me put it the other way: if I accepted the curve that Mr. Brown made and that has been talked about so much, as the average estimate, we will say, that would be arrived at if ten independent people had considered all of the conditions and put down their figures—if I considered that as the average, then I had a 25 per cent. break in my favor if everything went right. Now I was satisfied to play with a 25 per cent. break that might be in favor of me against a possible 50 per cent. break that might be against me. We at least had our fee, we were at least protected, so that if the worst came to the worst, I was not going to ruin the company, which a great many shipbuilders did by taking unfortunate and improper contracts with the Fleet Corporation. There are a lot of wrecks along both seaboards that resulted from people who had not had experience

doing just that thing. I had safeguarded the company so that if the worst came to the worst, we would make a little profit, and if the best happened we would make a very satisfactory one.

Q. So, then, as I understand it—let me see if I am correct—your basis for submitting the figures that you finally agreed upon with Admiral Bowles, below which you would not go, was a figure which, taken from the detail that resulted in the chart that Mr. Brown made, gave you the hope of a 25 per cent. saving?

A. I think that is a very fair and accurate statement of the situation.

Q. It was, as I understand it, more or less an over-all, so far as you were concerned; you had no more reason for believing it was 25 than 30 or 20?

A. Not the slightest.

Q. And therefore, when it comes to a question of this breakdown, it did not make any difference where you put that $10?

A. No.

Q. That was put there, really, to make it something for the other people to shoot at?

A. That is it exactly.

Q. And the $10 did not stay there anyhow?

A. Did not stay there anyhow.

Q. And you did not expect it to?

A. No, I knew it would not.

Q. I assume that you approached the figure for the Navy on the 85 destroyers in about the same way?

A. Very much the same way. As a matter of fact, up to almost the close of the negotiations with the Secretary of the Navy, we thought that those boats would be built on a cost and percentage basis.

MR. EVANS: Straight cost-plus basis.

THE WITNESS: Cost-plus basis. It was only on the Friday night before we settled with the Secretary that I had this thought on the sleeper going up to Boston, and the next morning I went in and talked to our general counsel, who was a very wise man about many things beside the law, and threshed it out with him, got my ideas in order, went back to Washington and put it up to the people in the Navy Department on Monday, sold them the idea that it was a good thing, and we settled the contract and the amounts that day, so there wasn't any estimating done on those boats, I am sure.

BY THE MASTER:

Q. No, I understood that. Can you tell us, if you know, what was the percentage of saving on the Navy contract?

A. I cannot tell you. You see, I left Bethlehem before those things were completed. As a matter of fact, there was an adjustment made when the final settlement was worked out between the Navy Department and Bethlehem, and I had an interest in the account and I received a check for it, but I never asked the details. I was terribly busy at the time and it did not make any particular difference to me anyhow. It was settled and done with and I don't know.

Q. You have not yet received a check on these contract ships?

A. No, sir.

Q. So you haven't any more as to that, have you?

A. No, sir, and I haven't spent it yet, either.

Q. I suppose Mr. Geiss would know what the

percentage of savings would be on the destroyer contract. I won't go into that. The answer is that you do not know?

A. I do not know.

Q. Just let me ask you this question. As I understood you, it was your expectation that the saving, if any, would be found in the item of labor, primarily?

A. Primarily in the item of labor—labor and management, of course.

Q. Management, of course, would be reflected in the item of labor?

A. Yes.

Q. The other items, as you figured your base, were sufficiently fixed, or at least the variations in the group would be such for and against each particular item, that there would not be any substantial saving in material?

A. There was very little chance of any saving, and that item particularly might have gone against us. I should have said that on the material end there was a very small chance of a small saving and a considerable chance of quite a large loss.

Q. I understood you to say you had not ascertained what the total saving was on the contracts in dispute?

A. No, I have never heard.

Q. Have you been interested enough to inquire where the saving was—assuming there was a saving, as I understand there was—whether it was in labor, or materials, or what?

A. I am very much interested in it. As a matter of fact, I never have had the time to sit down with the people that knew and go into it. I have no doubt they would have very gladly told me all the details if I had ever had the time and the oppor-

tunity to ask. I am perfectly sure that most of the saving was in labor. I would not have any hesitation in making that statement without knowing any more about it than I do.

Q. In view of the fact that you told us yesterday that so many of the estimates on which contracts for ship buildings were made resulted in a very substantial loss on the fixed price contracts, I was wondering if these contracts might not be a helpful cost clinic for future estimating?

A. Well, the conditions were so extraordinary that I do not know that there is very much to be gained from that.

Q. Except that if you have the worst conditions and get a result, is it not fair to assume that under the best conditions you could improve on that result?

A. Yes.

Q. However, the answer is you do not know?

A. I do not know.

FURTHER EVIDENCE IN BEHALF OF THE GOVERNMENT

ABE M. LISSON, having been duly sworn, was examined and testified as follows:

BY THE MASTER:

Q. Will you give your full name and address?

A. Abe M. Lisson, 38 Cherry Street, Lynn, Mass.

BY MR. BROWN:

Q. Were you previously engaged in the employment of the Fleet Corporation?

A. Yes; sir.

Q. During what period?

A. From about the beginning of November, 1921 until May, 1923.

Q. In what capacity?

A. As auditor in charge of cleaning up all unfinished contracts that the Fleet Corporation had at that time for construction work.

Q. And that related to all claims under these contracts now in controversy, did it not?

A. Yes.

Q. You have had no connection with the Fleet Corporation since May, 1923?

A. That is right.

Q. Where do you live at the present time?

A. In Lynn, Mass.

Q. Will you tell us whether, during the time of your connection with the Fleet Corporation, in connection with the settlement of Bethlehem's claims, or the attempted settlement of such claims, there was a dispute as to the rates which had been used at the various Bethlehem Shipyards in computing the estimates which they had submitted to the Fleet Corporation with respect to the contracts in controversy?

A. There always was a dispute as to the base rates.

BY MR. WOOD:

Q. By that you mean the base rates under the contracts?

A. Under the contracts, yes.

BY MR. BROWN:

Q. What was the nature of that dispute as to the base rates under the terms of the contract?

A. In line with our work, we wanted to check the base rates as actually used, and we never could check them because we could not get any figures.

Q. As I understand it, the contracts authorized the application of Navy Yard rates; is that the fact?

A. That is right.

Q. To put it in the form of an example, if I may, without saying that these figures were the figures actually used, as I understand it Bethlehem contended that the estimates in controversy had been based, we will say, on a labor rate of 40 cents per hour and the Fleet Corporation took the view that, instead of using a base rate of 40 cents per hour in connection with its estimates, Bethlehem had actually used a rate in excess of that, or, we will say for illustration, 50 cents an hour; is that correct?

A. That is right.

Q. And that was material, as I understand it, in connection with determining the amount of increased labor cost to be added to the base prices named in these various contracts; is that right?

A. Yes, sir; that is correct.

Q. And in connection with that controversy, as I understand it, it became material, from the viewpoint of the Fleet Corporation, to obtain the actual estimates used, or supposed to have been used by Bethlehem in connection with its estimating for the contracts in controversy; is that correct?

A. Yes.

Q. Did you have any conference with the representatives of Bethlehem with respect to that controverted question?

A. Yes, sir, a number.

Q. And did you have a number of conferences with Mr. H. G. Smith and Mr. Geiss with respect to that subject?

A. Yes.

Q. Would you say that you had seen both of those gentlemen on a great many occasions at various places and had discussed this question with them?

A. At a good number of places, we not only discussed that question but numerous others.

Q. All the other controverted matters that arose?

A. Yes.

Q. At any rate, you were in very frequent contact with both Mr. Smith and Mr. Geiss?

A. Yes.

Q. And during what period was that?

A. Starting, I should say, with about April of 1922, right straight through until March or April of the following year.

Q. And Mr. Smith was in charge of the negotiations of the adjustment of these claims on behalf of the Bethlehem Companies at that time, was he not?

A. Yes, sir.

Q. Will you tell us, in substance, what was said with respect to any requests made upon either Mr. Smith or Mr. Geiss with respect to the submission of its estimates and what was said in reply to any such requests?

MR. EVANS: I do not want to expect too much, but if you can give us dates or any particulars, I would appreciate it.

MR. BROWN: Try to do that.

A. I may not get these dates consecutively, but I will try to give you as many dates as I can, or as near as I can. I believe in perhaps March of 1922, we had a large conference with the Labor Adjustment Bureau, of which Mr. Aron was the Chairman, and at that time the base rates were discussed exten-

sively, that is the only thing that was taken up, and when they were asked for the estimates, the answer was that there were no estimates, that they were made in such a hurry that they were on the backs of envelopes or a piece of scratch paper, or something of that sort.

BY MR. BROWN:

Q. Can you say whether Mr. Smith and Mr. Geiss were present at the conference to which you refer?

A. Yes, both.

Q. And the request was made by you at that time for these estimates?

A. No, the request was made by—as I recall it, I believe the request was made through the Chairman, Mr. Aron, by Mr. Adamson.

Q. And both Mr. Aron and Mr. Adamson were representatives of the Fleet Corporation, were they not?

A. Yes.

Q. Do you remember who made answer to that request on behalf of Bethlehem?

A. I could not say positively. It was either Mr. Geiss or Mr. Smith.

Q. Either Mr. Geiss or Mr. Smith?

A. Yes.

Q. And just what was said, so far as you can remember, in answer to that request?

A. Due to conditions at the time the contracts were negotiated, there was not time enough to make up an estimate, just had to do it as quickly as possible because the Fleet Corporation wanted some action.

Q. Just to give the Master the proper perspective with respect to this disputed question, what would you say with respect to the importance of

this disputed question as compared with the other items that you were endeavoring to settle with Bethlehem?

A. That was the most important matter we had to settle.

Q. And was it a matter which was constantly arising between the Fleet representatives and Bethlehem?

A. It always cropped up at every conference.

Q. Can you remember other occasions on which Bethlehem representatives were requested to furnish these estimates?

A. At the meeting held in August, general meeting held in August, I think the same question came up again. In fact, I know the same question came up again and the same answer was given.

Q. At the time to which you refer were Mr. Smith and Mr. Geiss present?

A. Yes.

Q. And a similar request was made at that time?

A. Yes.

Q. And what was the answer at that time?

A. Practically the same thing; there were no estimates.

Q. What did the Fleet representatives state with respect to their impression as to what rates had been used, as to what those rates had included?

A. It was always the impression of most of the Fleet representatives—

MR. EVANS: That is objected to.

THE MASTER: No.

BY MR. BROWN:

Q. I am talking about what was said, if anything, to the Bethlehem representatives with respect to what the Fleet People guessed had been included

in these estimates with respect to the base rates?

A. A higher rate than the Navy Yard rates.

Q. Was there anything said about the supposition being that Bethlehem had made allowances in these estimates for anticipated wage rate increases during the contemplated period of construction of these ships?

A. On the East Coast it was considered that they used the Navy Yard rates plus the first Macy award.

BY MR. WOOD:

Q. Considered by whom and told to whom?

A. Considered by everybody that had anything to do with the various plants, with the audit of the Bethlehem contracts.

Q. And told to whom?

A. It was told to me, told to Mr. Brown, told to about everybody that listened.

Q. By you gentlemen inside the Fleet organization?

A. That is right.

THE MASTER: As I understand it, Mr. Brown, the purpose of this investigation of this witness concerning his request for the rate of wage used in making the estimate that was submitted in the letter of December 19, 1917, is to establish the fact, for the purposes of your case, that the inquiry was made concerning the estimate, that the statements were made which the witness has testified to, and the reasons given in those statements for not producing the detail of that estimate; that is the purpose of this investigation?

MR. BROWN: That is correct, if it is under-

stood that the inquiry with respect to rate relates to the request for estimates.

THE MASTER: For estimates on which the estimates that were finally given to the Shipping Board were made, and the estimates that you refer to are the estimates in the letter of December 19, 1917?

MR. BROWN: The estimates that I refer to are the estimates as to how Bethlehem arrived at the base prices finally named in the different contracts.

THE MASTER: But that is included in the letter of December 19, 1917?

MR. BROWN: They were refused, but these people were not concerned so much with that price as the price that was actually used. There was no issue of fraud at that time at all. There was this contest about the base rate and our people were anxious to find out what base rate had actually been used by Bethlehem in connection with these estimates in controversy.

THE MASTER: The purpose of it is clear, and within the line of that purpose the Master will permit it to come in. Otherwise it would seem to have been irrelevant.

BY MR. BROWN:

Q. I just want to note that Mr. Smith and Mr. Geiss, to whom you have been referring, are in court at the present time.

A. Yes.

Cross Examination

BY MR. EVANS:

Q. The only thing that you were concerned about was labor rates, was it not?

A. I was concerned about the entire contract at all times, not only labor rates. The labor rates were one of the items I was concerned with.

Q. I mean it was only in connection with the question of the labor rate that you were interested in the basis of Bethlehem's estimates?

A. Yes.

Q. And that is what you stated to Mr. Smith and Mr. Geiss, that you wanted to check up the estimates that they used for their item of labor, direct labor?

A. That is right.

Q. And they told you that what estimates they had had been made on scrap pieces of paper which had not been retained and were not then available?

A. That is right.

Q. Do you know the difference between a labor rate and an earning rate?

A. Never heard of the term earning rate.

Q. You never heard of the term earning rate?

A. Unless it means the rate a man actually is paid.

Q. What is the difference between the rate a man is actually paid and a labor rate?

A. A labor rate for a certain operation might be a dollar and he might only actually be paid eighty cents, I suppose.

Q. And vice versa, the labor rate might be fifty cents an hour and a man working piecework might make a dollar an hour?

A. That is right.

Q. So your labor rate would be fifty cents and your earning rate would be a dollar as to that man?

A. That is right.

Q. I have not used an unusual term when I speak of earning rate, have I?

A. I never heard it used before.

Q. You never heard it used before?

A. Not an earning rate.

Q. What is the term that properly expresses what I have defined and described as an earning rate?

A. Actual hourly rate paid, or piecework rate paid to the employee.

Q. And when you speak of an average rate in a plant, how do you describe it, when you want to get the average paid to all labor, both those working on an hourly basis and those working on a premium or piecework basis?

A. Both classes of labor together?

Q. Yes.

A. Take the total earnings and divide it by the total number of hours.

Q. And what do you call the result?

A. Average hourly rate, if that is what we are looking for.

Q. Average hourly earning rate, is it not?

A. I have never used the word "earning". I have always used the term average hourly rate paid, that is all.

Q. Average hourly rate paid; that would not be the same as the average labor rate in a plant, would it?

A. Not necessarily.

Q. Not if you had men that were working on piecework, is that correct?

A. Yes, sir.

Redirect Examination

BY MR. BROWN:

Q. There are certain refinements with respect to asking legal questions that a witness is not always familiar with. I do not want Bethlehem to have any opportunity to do anything other than meet this issue absolutely squarely that we have raised, and therefore I do not want to have a distinction made between a request for a rate and a request for estimates unless there is some propriety in the making of that distinction.

MR. EVANS: Now just a moment. I have asked him no such question and he has made no such answer in reply to it.

MR. BROWN: You have asked him whether his request was for the earning rate.

MR. EVANS: I did not at all. You do not seem to understand very well.

BY MR. BROWN:

Q. What I am directing your attention to is this, whether or not the request to which you have referred in your direct testimony related to Bethlehem's estimates or to an earning rate or a labor rate?

A. The requests were to the requests used in the estimate that was presented to the Fleet Corporation at the time of the contracts.

MR. EVANS: I object to going into this any further. It is not redirect examination. The

witness has given a perfectly intelligible answer.

MR. BROWN: I do not care who answers the questions, but I am entitled to have this cleared up.

THE MASTER: I thought it was clear. Usually the number of times that a witness is entitled to repeat is three and this is the second time. Once more we will take it and then we are through. If you think it is not clear, ask it again.

BY MR. BROWN:

Q. What you requested, or what the Fleet representatives requested, as I understand it, were the estimates which Bethlehem had actually used in arriving at the base prices named in these contracts; is that correct?

A. Yes.

Q. There is no question about that?

A. Not at all.

Recross Examination

BY MR. EVANS:

Q. Base prices for what? Base prices for labor, wasn't it?

A. Yes.

Q. For labor?

A. Yes.

Redirect Examination

BY MR. BROWN:

Q. But the estimates which you requested were estimates which related to the method by which they had arrived at this base price, were they not?

A. That is right.

THE MASTER: And the witness was told they did not have them.

THE WITNESS: That is right.

MR. BROWN: They had to get the whole estimate to see what was the labor rate estimate. Here are Mr. Geiss and Mr. Smith and I do not think they are going to take the stand, and that is why I want the question cleared up.

Following an informal discussion as to the question of further oral testimony on behalf of the Government, the Master stated:

The Master understands that yesterday Mr. Brown closed the Government's case in chief on oral testimony, except for the testimony of the witness Lisson, who has just been on the stand, and the testimony of Mr. Radford, if he can be obtained, and in that event the record testimony of Mr. Radford will be withdrawn, so far as the direct examination in the Government's case in chief. That, I understand, Mr. Brown, is a correct statement of your position?

MR. BROWN: That is a correct statement, with this possible exception, that Mr. Radford will be used in rebuttal of the defendant's case and I expect to call him in rebuttal as I did at the last hearing.

MR. EVANS: I will serve notice now that if you call Mr. Radford in rebuttal I shall insist that his testimony be confined to rebuttal.

MR. BROWN: I called him in the last proceeding and I expect to call him again in rebuttal if I can get him here.

MR. EVANS: I insist on putting you on notice that if you call him in rebuttal I am going to insist that his testimony be confined to rebuttal. I may say, for the information of the Master, that what was rebuttal in the last case is not rebuttal in this case, because the case has been tried by the Government in quite a different way.

THE MASTER: My understanding yesterday, Mr. Brown, was that the testimony of Mr. Radford as offered at the previous trial was offered by you as a part of your case in chief.

MR. BROWN: No, sir, it was after Mr. Piez's testimony, in rebuttal.

THE MASTER: No, not at the last trial but at this trial, that you were offering Mr. Radford's testimony from the record of the other trial, in which it was offered in rebuttal, as a part of your case in chief before me.

MR. BROWN: That is correct.

THE MASTER: That was my understanding and that is the way it was taken and that is the way it is in.

MR. BROWN: That is correct.

THE MASTER: If you do not want it in that way, then Mr. Evans is entitled to know it, because he serves notice on you that it will

not be accepted in that form in rebuttal, and that if it is going to go into rebuttal, then your case will have to be held open.

MR. BROWN: After Mr. Piez's testimony is introduced by the Bethlehem counsel, there will be no question but that everything that Mr. Radford said will be in rebuttal, and I accept service of the notice which Mr. Evans has given and I still offer Mr. Radford's testimony in our direct case, with the privilege, if I can, of obtaining him in rebuttal, and if his testimony is not proper in connection with rebuttal, we will gladly run that risk.

THE MASTER: That I understand to be the situation. Such testimony as you take from him, if he comes here, as I understand it, is going to be offered in rebuttal and rebuttal only, and that you withdraw any of his testimony in chief as it is now on the record; is that correct?

MR. BROWN: I do not want to put my foot in it in this case.

THE MASTER: I just want to warn you that, on Mr. Evans' statement, he is entitled to hold his position and if you cannot justify Mr. Radford's oral testimony in rebuttal, it will have to be either out or taken as direct evidence—that is, all in chief.

MR. EVANS: I am perfectly willing to do this. Mr. Brown has offered his evidence in chief and that may be received as though he had so testified in this case. Now if there is something that Mr. Brown thinks is proper rebuttal in his case here and he wants to call Mr. Rad-

ford in rebuttal, then of course I have no objection; but in that event I shall insist that his testimony be confined to rebuttal testimony, and I understand that his testimony given at the last trial is in this case in chief and offered in chief.

THE MASTER: It was so offered yesterday.

MR. BROWN: It is offered in chief.

THE MASTER: I may say, for the benefit of both of you, that in view of the absence of Mr. Schwab and Mr. Piez, as I understand neither of them is to be offered as a witness in person before the Master, I regard Mr. Radford as one who should be produced in this case, so that the whole case can be developed from both sides, and I think that Mr. Brown ought to know that that is the Master's point of view, that I think Mr. Radford ought to be here in person if it is possible to obtain him.

MR. BROWN: Anything you think is going to be helpful to your decision of the case I will gladly comply with.

THE MASTER: Not so much to help the Master, but for the benefit of the case, so that the case will have the appearance of having at least some one of the major representatives of the Government in this transaction before the Master, because I have had the benefit of the personal appearance of those who represented Bethlehem in this negotiation, and there may develop out of their testimony certain questions that the Master might like to ask some one of the representatives of the Government.

EVIDENCE ON BEHALF OF BETHLEHEM (Cont'd.)

JOSEPH A. HONSICK, recalled:

BY MR. EVANS:

Q. At the previous hearing in this case you produced an Exhibit which you prepared or which was marked and offered in evidence as Government Exhibit G-46, the paper which I hand you, did you not?

A. Yes, sir.

Q. That Exhibit, as I understand it, was made up for the purpose of showing the comparison between the actual cost and the estimated base cost on all of the contract ships; is that right?

A. I presume that is what it might have been used for, but I did not prepare it for that purpose.

Q. Let us see what you did do. You took the actual cost of the boats, separating them by contracts, didn't you?

A. Let me look at the Exhibit. I prepared it two years ago and I don't recall every figure.

Q. Did you read over your testimony of the last trial? Don't you recall what this exhibit was?

A. I read it over quite a long while ago.

Q. Isn't it a fact that this exhibit represents a calculation showing the actual cost of the boats which Bethlehem built under these contracts, separating them by contracts?

A. Yes.

Q. And in order to get a fair comparison between the actual cost and the estimated cost which appears in the contracts themselves, you have deducted from the actual cost wage increases, haven't you?

A. That is right.

Q. And you have deducted changes and extras and any other deductions which were necessary in order to bring back the actual returned cost of these boats in line with the estimated or base cost under the contracts so that it would be an absolute comparison, haven't you?

A. Yes, that is right.

Q. And the actual cost that you took for the purposes of that calculation was the amount of cost which had been conceded by the Government in the stipulation which was filed in this case as Exhibit A, am I right?

A. It was in that stipulation, yes.

Q. So that, for instance, on contract 178, you have not included as an item of cost the cost of replacing defective work on the Cabrille, have you, because in the original stipulation that was disallowed?

A. I think the item of the Cabrille was handled as a separate matter and was settled as a separate matter outside of this cost.

Q. Yes, but I am asking you whether in making up your transcript showing the actual cost of the three tankers built at Harlan's under contract 178, you included as an item of cost any part of Bethlehem's claim for replacing the defective work on the Cabrille. You didn't do that, did you?

A. I don't think it is included.

Q. Because at the time you made this up the Government had disallowed that as an item of cost and that was one of the items in dispute?

A. You say we disallowed it but, on the other hand, there was some adjustment made.

Q. But the adjustment was made by stipulation

of counsel after you had made up this exhibit; isn't that right?

A. I think that is when the stipulation was made.

Q. So, if I am right in my recollection, manifestly the items of adjustment is not reflected as an item of cost in here?

A. I don't think the Cabrille, the condemned work, is in there. I am not absolutely sure but I don't think it is in there.

Q. At any rate this exhibit was made up before the hearings before Mr. Roberts, wasn't it?

A. Yes.

Q. And has not been altered since then as a result of any agreement or stipulation that was made at those hearings?

A. Not that I know of, no, sir.

Q. Just to make sure that it is clear what you have done here, take the second contract which you analyzed, which is contract 178, covering three tankers at Harlan's, and that was the one which included the Cabrille, wasn't it?

A. I don't remember.

Q. You don't know?

A. I don't remember exactly what hull number it was and what contract it was. I remember the Cabrille item of repairs.

Q. Well the Cabrille was a 7500 ton tanker built at Harlan, wasn't it?

A. I presume it was if you say so.

Q. Let me see if I am right in understanding this. You have taken the various items of cost which went into the actual construction of these ships, breaking them down according to material, labor, operating expense, administrative and general expense, and depreciation; am I right?

A. Yes.

Q. And then you have made such adjustments as were necessary in order to reduce the actual cost to a basis comparable with the estimated or base cost in the contracts; is that right?

A. Yes.

Q. And that adjusted cost is the cost which appears on each one of these sheets entitled "Averaged cost per vessel as originally contracted for"?

A. Yes, sir.

Q. So that, referring again to the three tankers at Harlan, according to your calculation, the average cost of these three vessels as originally contracted for was $1,675,014.05; is that right?

A. Yes, sir.

Q. And, if I am right in saying that the Cabrille was one of those, then that actual cost would be increased over the amount which you show by a proper adjustment by reason of the subsequent allowance of part of the labor cost on the Cabrille; am I right?

A. Yes.

Q. And what I have said regarding contract 178 applies to all of the contracts which you have analyzed in exactly the same way?

A. Yes, sir.

Q. Except that I notice you have no analysis of contract 465. What was your reason for not including a similar analysis of contracts 465?

A. I don't know why I did not prepare 465 definitely now, but I don't think there was so much dispute as to the price of 465 or the savings were limited or some such contention was made, for which reason we left out 465.

MR. EVANS: I offer this Exhibit in evidence.

(Admitted without objection as Exhibit B-32.)

Cross Examination

BY MR. HALLETT:

Q. That document which has just been offered was made up as the result of your calculations, as I understand it, drawn from the final bill submitted by Bethlehem Shipbuilding Corporation and designated before as Exhibit G-44 and also the tabulation of the Union Plant costs previously designated as Exhibit G-45?

A. Yes, sir.

MR. HALLETT: I offer those two Exhibits.

(Received as Exhibits G-44 and G-45.)

Note: Exhibits 32, G-44 and G-45 are to be treated as physical exhibits.

THE MASTER: The Master would like, for the purpose of the record, to have counsel agree upon a calculation of the percentage of savings on the ships in dispute here by contracts, the amount shown by each contract separately. There is no occasion to show it on each ship. I think if you group them under the contract it would be sufficient, but I would like the tabulation to become part of the record of just what the percentage of savings is between the contract price under each contract and the actual stipulated cost of the ships under that contract.

MR. EVANS: You want that figure on the basis of the actual cost not reduced to terms of the original cost as stated in the contract?

THE MASTER: Well, you may have it both ways.

MR. EVANS: We cannot give it to you exactly because there are contentions here which affect that question one way or the other.

THE MASTER: There is a question of law on the wage item that has to be disposed of before you get that. Why not let each counsel give me that tabulation based on their contention?

MR. WOOD: Bethlehem offers the evidence of Mr. Charles M. Schwab, as given before Mr. Roberts, at the previous hearing, as reported in the transcript of that hearing between pages 711 and 736, both inclusive, as part of the record in the present proceeding.

MR. BROWN: We have no objection.

THE MASTER: The Master understands that the testimony of Mr. Charles M. Schwab given in person before Mr. Owen J. Roberts, as Special Master and Referee, is being offered before the Master in lieu of the oral testimony of Mr. Schwab, who would otherwise appear personally before the Master, and that this method of taking his testimony in this record is not objected to by the Government.

MR. BROWN: That is correct.

THE MASTER: The Master will accept his testimony in that form and direct that it be inserted in the testimony at this place in the record in the case of Bethlehem. It is to have the same force and effect, so far as the record is concerned, as though Mr. Schwab had appeared and testified in person.

(Testimony above offered in evidence is as follows:

"CHARLES M. SCHWAB, having been duly sworn was examined and testified as follows:

BY MR. WOOD:

Q. Mr. Schwab, will you recite the circumstances which led up to your acceptance of the position of director-general of the Fleet Corporation?

A. I received a telegram from Mr. Hurley about the middle of March 19—

Q. March or April?

A. Perhaps the middle of April. My memory is not so good about the dates,—asking me to come to Washington. I hadn't the slightest idea what he wanted. I went down to Washington and met him with Mr. Piez, Mr. Colby, and a man by the name of Mr. Logan the next morning at the Emergency Fleet Corporation offices. They bluntly told me the situation. They were very much alarmed over the destruction of ships and the lack of progress being made at the shipyards, and as Mr. Hurley expressed it, they wanted to get the services of some captain of the industry who stood well before the country for progressiveness and energy, and asked me to join the Emergency Fleet Corporation as director general. I was greatly surprised, and argued with all of them, Mr. Colby especially, and Mr. Hurley. I did not want to undertake such a thing because I was already overloaded with the work I was then doing for the Bethlehem, and coupled with the fact that I had charge of all the work I had undertaken with the Allies, I felt I was doing my duty in every way to my country, and to ask me to undertake anything more was more than I could do, and above all, I feared that

such an undertaking, notwithstanding the request of the President and others, because we were such a large factor in the shipbuilding industry at Bethlehem—that I would open myself to such attacks in the years to come that would make my later years unhappy, and in addition to that, I gave other reasons why I thought I ought not to go; that my relations with the President were not of the best; my policy with reference to labor was the very opposite of what his was; I had known the President for many years when he was president of Princeton, and governor; that we had not agreed upon such things; and that I felt I had to have a free hand and did not think I would get it. I urged that and many other reasons. Mr. Colby, Mr. Piez, and Mr. Hurley persisted, and I said finally that I would consult my associates. I sent for Mr. Grace and Mr. Powell and other associates of the Bethlehem Steel Company, and I may say that as a unit they were opposed to it; that I ought not to do it. I went back to Washington on Tuesday following the Sunday, fully prepared to refuse it, not to undertake it. Mr. Grace was with me but he did not attend the meeting. They led me to believe that they had discussed the matter at great length with the President; that the President was insistent upon my coming; that he and the rest of them felt it was a duty to do so; and like most people, and like I illustrated by the cow story, I was persuaded, and I said I would come, but said, 'I will not undertake it under any consideration unless such regulations and stipulations are made as will relieve me of any possibility of doing business with my own concern'. I have been in business 50 years, and I have been director and manager of a great many companies for 40 years, and I have the record of be-

ing able to say that I never sold or had any business for any company which I controlled with any other company in which I had an interest, and I vigorously determined that under no condition would I enter into any undertaking where such a condition of affairs would arise, but under those conditions, in which they assured me I would be thoroughly safeguarded, I accepted, conditioned on the personal approval of the President of the United States with them, with the result that I assumed that he knew all the details, and I have no reason to believe he did not. I did not go over with him in detail, but the friendly manner in which he approached me and approved of my decision more than ever confirmed me that the matter could be adjusted along the lines I desired. So I accepted and assumed the responsibilities of the position.

Q. Did you during the time that you were director general refrain from representing the Fleet Corporation, or have anything to do in any manner with business dealings with Bethlehem?

A. I had not been there very long until I realized that the important thing in the Fleet Corporation, considering the time and circumstances, was not the greatest engineering ability of Mr. Piez and the other officers, not the great works under the management of Mr. Powell and the rest of them; that it was a bigger and broader question; that what it needed was somebody that would have the public confidence and the confidence of the press of the country to enthuse everybody connected with the Fleet Corporation to the completion and hastening of their task. When I have been asked as to what was the most important help I had, I have always said the attitude of the press, because from the moment I

went down there I had the press to a unit throughout the United States with me, and I always believed that the best work is done under the spirit of approval and approbation. So I felt that was the important thing in the Fleet Corporation, and I felt, knowing myself, that I had the qualities that would enable me to do that part of the work better than Piez or anybody else. So therefore I decided and said to them, 'That is what I am going to undertake. I am going to devote myself to that broader question'—what I termed human engineering. I did not think the price of ships or anything of that sort was of any moment compared to this bigger and broader question. Therefore, during the whole of my time as director general of the Fleet Corporation, I said to Mr. Piez and his associates that all questions of general management were going to be left to them, and I would take care of the other business, and I have no reason to feel that I made anything but a wise decision in that respect, so that at no time, under any conditions, did I meet, converse with, talk, bargain, or do anything with Bethlehem or any of the others.

Q. As I understand you, you thought one of the biggest parts of your job was to instill enthusiasm into all persons associated with the shipbuilding program, from officers and employees of the Fleet Corporation down to the works managers and men in the yards? Is that right?

A. Quite so.

Q. What did you do in order to accomplish that, Mr. Schwab?

A. I visited not only once but several times most of the shipbuilding yards in the United States from Maine to California. I personally met with all the

managers, superintendents, and many, many of the workingmen at noon time meetings. As you know, I established a headquarters here in Philadelphia, where I thought I would be nearest to the greatest number of shipbuilding plants and employees.

Q. I think you gave us an illustration the other day, Mr. Schwab, of how you worked and how the others worked, by saying that on some trip you made to San Francisco to stimulate business, while the others were busy talking to managers and presidents of these plants on technical matters, you spent your time out in the yards with the men in various groups?

A. That is true.

Q. That is illustrative of what you regarded as the most important task that confronted the Fleet Corporation?

A. Quite so.

Q. What success did you have in that?

A. Well, I flatter myself that we had very great success, because I think the records will show that we had little if any labor difficulties of any kind. Where we did have, they were easily regulated. I established the system of presenting three flags to the shipyards that made the best record, and I would attend the ceremony of the hoisting of the flag. I adopted methods of that kind, feeling that the great backbone of workingmen was more important to getting ships than any other one question.

Q. Were labor conditions bad at the time you took hold?

A. Yes.

Q. Was labor more or less unruly?

A. Yes.

Q. Filled with bad spirit?

A. Yes.

Q. Without asking you to be immodest, did you overcome that situation?

A. I think I helped it very materially. That is my own opinion, and I think that was the general accepted opinion.

Q. You say you did not concern yourself with contract prices or technical matters. Was there any part of the constructed program with which you did concern yourself?

A. Yes. I had very frequent conferences. One of the things I found was that it lacked the broader aspect of the whole situation. Nobody seemed to know what the United States required, how many ships of each character. One man whom I met almost daily at the War Council was General Goethals, and I consulted with him as to the real requirements of the United States, the number and character of ships we wanted, whether for transportation, whether for fuel, or for what purpose. So I concerned myself with that aspect of the case in a very broad general way.

Q. To find out what kind of ships were needed to be built?

A. Yes. We were building a lot of ships that I felt were useless and of no value, and I was endeavoring to see if we could correlate the shipbuilding industry so as to give the United States the best results.

Q. Prior to your appointment as director-general, were you a member of the Board of Directors of the Bethlehem Shipbuilding Corporation?

A. I am not sure of that. I think so. I am on all the boards, most of the boards of the subsidiary companies, but I don't remember. The record will show it.

Q. Do you recall whether you resigned from the Board of the Bethlehem Shipbuilding Corporation?

A. I don't recall.

Q. Mr. Robison says he thinks that is in evidence.

A. I don't know. I think I did what my legal advisors told me to do, but what it was I don't remember.

Q. Were you ever a member of the Board of Trustees of the Fleet Corporation?

A. Never.

Q. I call your attention to Exhibit G-160, a memorandum signed by you and addressed to Mr. Hurley, dated October 2nd, 1918, which reports an agreement with Mr. Farr for modification of certain contracts with the American Shipbuilding Company on the basis of 10 percent profit. Do you recall whether, prior to the writing of that letter and in connection with the original contracts, you had any knowledge from any source as to the purposes of the American Shipbuilding Company as affecting the profits that were to be made?

A. This letter might seem inconsistent with what I have already said about having no activity with the business of the corporation, and therefore requires my telling you as well as I can remember a story with reference to this. Mr. Hurley, the president of the Board, concerned himself very much with everything regarding publicity of the activities of the Fleet Corporation. That was something in which he had a great interest, and which he gave personal attention. I did not bother much with that. When I got the report of the American Shipbuilding Company and discussed it with Mr. Hurley and with others—

Q. That is, when you got the report referred to in that memorandum?

A. The report referred to here, the balance sheet of their earnings and the newspaper comments. Mr. Hurley was very much exercised about it. I knew the chief owner, Mr. Mather, who has been a life long friend from boyhood, of the American Shipbuilding Company, and I also knew Mr. Farr very well, and I suggested that I take the matter up with them. I know I signed this letter. To the best of my knowledge and recollection, Mr. Cuthell wrote it for me and he wrote it for Mr. Hurley, I think. It was my impression that he wrote it for Mr. Hurley to use as publicity matter if he wanted to.

Q. The letter itself recites that you sent for Farr—

A. It recites all this correctly, because Mr. Cuthell thought it was put in the best manner for Mr. Hurley to use if he wanted to use it. As far as any negotiations with Mr. Farr on his contract, other than our general conversation I had none.

Q. Had Mr. Farr or Mr. Mather told you that they only expected to make 10 per cent. out of those contracts?

A. Yes.

Q. Were you aware of that fact at the time you sent for Mr. Farr?

A. As a matter of fact, I perhaps would not have given it any consideration if the question had not arisen in the way it did.

Q. Was there any policy of the Fleet Corporation to limit the profit to 10 per cent.?

A. My policy with the Fleet Corporation might have been regarded as an extravagant one. It is one that I have practiced all my life, that the question

of the cost of ships in a crisis such as we faced was of little consideration compared with our ability to get ships. We built hundreds of ships that were of no value to us, but it was wise to keep up the spirit. That was the primary question in my mind, to get ships, to get ships. I always likened it to the fact that on the battlefield millions of shells were fired off. That was the broader question that I looked at; it was the broader view that I took.

Q. It appears that subsequent to this conference of October 2nd a contract was negotiated with the American Shipbuilding Company modifying the contract referred to in your memorandum of October 2nd, and to which modification that memorandum relates. I ask you whether you personally had anything to do with negotiating the details of that contract and the modifications?

A. To the best of my recollection, I know nothing about it.

Q. Mr. Schwab, at the time that you wrote this memorandum, did you have any knowledge generally as to the kind of ships that were being built by the American Shipbuilding Corporation?

A. I did.

Q. The character of their work?

A. I did.

Q. Were those ships comparable either in kind and character of work or in the time necessary for their completion with the ships that were being built by Bethlehem or other shipbuilders?

A. No. Indeed, it was a very grave question whether we ought not to discontinue building those ships.

Q. Will you tell us in what respect they differed?

A. The ships in the Lake were built of such a size that they were not of any use to us. It was really an assembling job. It was not a shipbuilding job. They could turn out a ship in a few months if necessary to do so, because it did not embrace any of the bigger problems of the difficult and more complicated ships. They had been building these ships for years on the Lakes for use on the Lakes. I doubt whether those ships could carry enough coal to cross the sea. It was a question of morale whether we ought to stop building them.

Q. Have you any information as to the comparative length of time it took the American Shipbuilding Company to turn out one of its ships as compared with the tankers and cargo vessels?

A. I can't tell you that. I should imagine, making a rough guess, they could turn out five or six to one.

Q. At any rate, there was a much greater turnover?

A. That I must say to you with frankness. When there was any discussion of this ten per cent. matter, that was not the thing that came up at all. I had not urged 10 percent; it was suggested by Mr. Farr. The question of price did not concern me at that time at all, with either one.

Q. Assuming that 10 per cent. would be the proper margin of profit for the American Shipbuilding Company, would you say that it would be adequate for old iron shipbuilders doing the class of work they were doing, either Bethlehem or Newport News or anyone building boats, not assembling them, but turning them out much more slowly?

A. Certainly not.

Q. Why not?

A. Because one required great capital, plant investment, and expert technical ability, while the other was an everyday turnover.

Q. One had a rapid turnover while the other had a slow turnover?

A. Yes.

Q. Do you recall when you retired as director general?

A. Approximately, yes.

Q. About when was it?

A. I think it was about December, 1918.

Q. During the time that you were director general, did you have any knowledge of Bethlehem's probable profits or of the costs of the ships being built by Bethlehem?

A. Mr. Wood, I have repeated, and I say now, that I kept myself entirely aloof from anything connected with Bethlehem. I knew nothing of their profits on ships. I did not meet its officers unless it was casually, and knew nothing while I was director general about it. I was super-careful to have no connection.

Cross Examination

BY MR. BROWN:

Q. Mr. Schwab, this transaction with the American Shipbuilding Company has taken place a long time ago, and I know you have been very busy on other divers things and not been giving much attention to this case, but are you correct in your statement that you had no negotiations with the American Shipbuilding Company representatives with respect to any contracts they entered into with the Emergency Fleet Corporation?

A. I don't remember any.

Q. It appears on page 490 of the Concession of Documentary Evidence that you wrote to Mr. Farr under date of September 27th, 1918 stating in the second paragraph of that letter, "You will remember, on the occasion of my visit to Cleveland, at which time we made our last contract with you, I questioned you as to the amount of profit you would make and you assured me it was very moderate and reasonable." It is true, is it not, that you did go to Cleveland and did discuss the last contract made with the American Shipbuilding Company?

A. No, sir; it is not true. I went to Cleveland several times and visited the Farr Shipyard many times. I am inclined to think that letter perhaps was written by Mr. Cuthell also, but this is certain, I had no negotiations with Mr. Farr with reference to his contract for ships at any time.

Q. That applies with respect to any contract that was entered into between the American Shipbuilding Company and the Fleet Corporation?

A. It does.

Q. You think that whoever wrote that letter which you signed and to which I have called your attention was mistaken in saying that on the occasion of your visit to Cleveland, at which time the Fleet made its last contract with the American Shipbuilding Company, you questioned Mr. Farr as to the amount of profit that the American Shipbuilding Company would make, and Mr. Farr assured you it would be very modest and reasonable?

A. Mr. Piez, Mr. Cuthell, and myself usually traveled together. When we did go together, Piez and Cuthell would meet with the officers of the company, and make any business transactions that would

be necessary. That would be likely to occur. I was with them in Cleveland when it was done, but I did not do it.

Q. I am merely endeavoring to refresh your recollection as to matters which have taken place a long time ago.

A. My memory is not so good.

Q. I have before me what purports to be a copy of a letter of September 29th, 1918 addressed by M. E. Farr, President, American Shipbuilding Company, to Edward N. Hurley, Esq., in which he states: "At the time Mr. Schwab made his trip to the Great Lakes, the matter of profit was discussed, and I assured him that it was the purpose and policy of the company to limit its profit on ships contracted for by the Emergency Fleet Corporation, to 10 per cent. About two weeks later, we again discussed the subject in Philadelphia, and Mr. Schwab stated at that time that he had advised President Wilson that he thought the shipbuilder should be entitled to ten per cent. profit". Does that statement in that letter accord with your understanding?

A. No sir; and furthermore I never saw the President from the day I took office until I went with him to Europe for the Peace Treaty, and so I could not have reported anything like that to the President.

MR. EVANS: Does that purport to be a letter from Mr. Schwab?

MR. BROWN: This is a letter from Mr. Farr to Mr. Hurley.

THE WITNESS: Naturally, I talked to Mr. Farr when I met him about my correspondence.

Naturally, I did, but in the general way I testified to.

BY MR. BROWN:

Q. But you do not remember any conversation with the President?

A. I told you I did not see the President from the time I took office until I went to Europe with him.

Q. Is it possible that at that original conversation the question of profits was discussed and you so expressed yourself?

A. Never. The question was never discussed.

Q. Mr. Schwab, how much experience had you as a shipbuilder or in the shipbuilding business prior to October, 1918?

A. When I bought the Bethlehem Steel Company in 1903, I sold it again to a lot of people who had made a collection of shipyards, and took in pay the bonds for same. The company failed, and I was obliged to foreclose the bonds, and as a result, acquired these shipyards. After I acquired the shipyards, I naturally followed the business from a business point of view very closely, I knew what was going on. I followed their financial and other business with the same care I did the steel company, and that was my first experience in shipbuilding. Then I was associated with Admiral Bowles in the furnishing of battleships to Argentina. As one of the witnesses testified, they lost so much money in Fore River that I was obliged to take over the Fore River Shipbuilding Company to keep my faith with Argentina.

Q. Do you think you are qualified to compare the ships constructed by the American Shipbuild-

ing Company with the ships constructed by the Bethlehem Company?

A. I am. I know enough about it.

Q. In your conversation with Mr. Farr leading up to the confirmation of the last contract, he assured you that the price named in that contract was a reasonable one?

A. I don't think that there was any such discussion. I just said to Farr, "You must adjust this in line with what you and Mather said to me." I don't think we had any discussion as to the question of the ships being smaller than ours or anything like that.

Q. I am referring to the negotiation of the original contract, not to its revision.

A. I had nothing to do with it.

Q. But in this letter offered as G-160, page 493 of the Concession of Documentary Evidence, it is stated in a letter signed by you: "The price fixed in the contracts between the American Shipbuilding and the Fleet Corporation was agreed to only after extended negotiations and as to the last contract made in May, 1918, the price was fixed after extended conferences not only with Mr. Farr but with all of the other Lake shipbuilders and was consented to by me only upon the assurance by all of them that the price was a reasonable one." Does that accord with your understanding?

A. Well, I don't know. I have told you the exact circumstances of that letter.

Q. May I ask you, because I forget exactly what you did say, whether or not that paragraph I have read does accord with your understanding of what took place?

A. My general understanding of what took place

with Mr. Farr was that I asked him to revise—I did not say 'revise your contracts', but to put this matter in shape, "That will confirm what you and Mr. Mather told me about it." He said he would do so, and that ended my connection with it.

Q. This was a rather important matter to the American Shipbuilding Company, which had the effect, according to this letter, of reducing the price to such a figure that the Fleet Corporation would be saved in the neighborhood of $12,000,000. I ask you, in view of that circumstance, whether you did not consider this question of sufficient importance to give it your personal attention, and really understand the statements which are made in this letter of October 2nd, 1918?

A. I understood the statements very well, but I say this, that Mr. Piez and Mr. Cuthell, who devoted themselves to that part of the business, were so much more and better qualified to do it than I, that I was quite content to rest upon what they would do.

Q. Didn't you demand a full explanation of this transaction, which resulted, according to your letter, in saving the Fleet Corporation $12,000,000.?

A. No.

Q. When this letter was prepared, did you ask Mr. Piez or Mr. Cuthell the reasons for their insistence upon revision of the American Shipbuilding contract?

A. I don't remember that I did.

Q. Do you think it likely that you would, in view of the fact that the reduction was to result in a saving of twelve million dollars?

A. My recollection is that I said to them, "This

is what Mr. Farr and Mr. Mather said to do. Now you attend to the details."

Q. Did you realize that you were insisting on a reduction which resulted in a net amount of saving, although practically none of the contract ships contracted for with the American Shipbuilding Company had been completed, and that the revision was based entirely on profits made by the American Shipbuilding Company in connection with requisitioning ships?

A. Mr. Brown, you must remember, that Mr. Farr suggested that he only wanted the 10 per cent. profit and I was not insisting on their doing something that they had not already said they would do.

Q. How do you account for the statement in that letter that Mr. Farr demurred at making any reduction?

A. I don't know. I have told you the purpose of the letter.

Q. I suppose the American Shipbuilding Company understood that the purpose was to reduce their savings so that they would obtain a just and reasonable compensation?

A. I suppose so.

Q. You understood, did you not, that this reduction was being sought and insisted on by the Fleet, although the American Shipbuilding Company had not had an opportunity to see what profits it was going to obtain from its contract ships, but merely because their annual statement showed a very large profit in connection with requisitioning ships?

A. I can't answer that. All I know is that I saw the big profits, and Mr. Farr said that they would change their contract as it was eventually done. The

reasons and the psychology I can't give you, because I don't remember.

Q. If you will look at the contents of the letter on page 492, it states: "I immediately sent for Mr. Farr and demanded that he consent at once to a reduction in price on all of his contracts. He claimed that the large profits were made out of the commandeered ships and that only a few of his direct contract ships had been completed and delivered during the fiscal year covered by the report. I pointed out that this argument had little weight because his contract ships were more expensive to us than the commandeered ships and that his material and labor protections were such that very likely during the coming year his company would make a great deal more than they did during the past year." I ask you if that does not accord with your understanding of what took place.

A. That is my recollection of it.

Q. Wasn't Bethlehem Steel Company in exactly the same position in that its prices for requisitioning ships were considerably less than the prices which had been agreed upon?

A. I knew nothing about Bethlehem Steel Company's ships.

Q. Not knowing that, did you tell Mr. Piez, who was supposed to look after all matters pertaining to Bethlehem, to make a careful check to see that Bethlehem would not be caught in the same position that the American Shipbuilding Company had been caught?

A. No question about Bethlehem was ever taken up with Mr. Piez at any time.

Q. You did not say to Mr. Piez: "My hands are off any contracts, but we are insisting on reduction

because of enormous profits that have been made in requisitioning ships, and contract ships are even in excess of those".

A. I certainly did not think any such statement was necessary, and I did not do it.

Redirect Examination

BY MR. WOOD:

Q. Mr. Schwab, Mr. Brown asked you a rather involved question toward the close, based, as I understand it, upon the assumption that it must have been obvious, if the situation recited in this letter existed in connection with the American Shipbuilding contracts, it must exist in connection with Bethlehem. If that was obvious, it would be just as obvious to Mr. Piez and Mr. Cuthell as to you?

A. More so.

Q. Was Mr. Mather present at this conference reported in this memorandum of October 2nd?

A. I don't think he was.

Q. So that when you have referred in your testimony to what Mr. Farr and Mr. Mather had told you about the 10 per cent. profit, you must be referring to something they had told you prior to the conference of October 2nd?

A. Of course.

Q. That may have been and very probably was at the time that the contracts were negotiated with Farr in May or whenever it was, at the time you and Piez and Cuthell were out there?

A. Yes.

Q. I also understand you, while that information was communicated to you at the time by Mr.

Mather and Mr. Farr, you did not personally participate in the negotiation of those contracts?

A. At no time.

Q. Were these American Shipbuilding contracts that were revised as a result of a meeting referred to in the memorandum of October 2nd on the same basis as contracts with other Lake yards?

A. All I know is what I heard Piez and the other gentleman say.

Q. Those contracts were not revised contracts with other Lake yards that had been made simultaneously and on the same basis?

A. I can't tell you.

Q. At least, if they were, you had nothing to do with their revision?

A. I can't tell you.

Q. At least, if they were, you had nothing to do with their revision?

A. No.

Q. Did you have anything to do with any revision of contracts?

A. No connection. I did not desire Mr. Piez in any manner to interfere with the work I was doing, nor did I in any manner desire to interfere with the work he was doing. I perfected an organization to help me with my work, and he did the same with his. We went along in complete harmony and understanding. I do not say that we did not talk over various phases of our constant association. Nevertheless, the facts are as I have stated.

Q. Mather was an old long-time friend of yours, and Farr also was a man with whom you were very well acquainted?

A. Many years, yes.

Recross Examination

BY MR. BROWN:

Q. Mr. Schwab, in April or May, 1918, Mr. Piez and you had the assistance in the Fleet Corporation of persons who were experienced in shipbuilding, did you not?

A. Yes.

Q. It is a fact, is it not, that even after extended conferences with the American Shipbuilding Company leading up to the consummation of this final conference, and even though you had the assistance of such expert advice, or even though Mr. Piez had the assistance of such expert advice, you were nevertheless, or Mr. Piez was nevertheless forced to rely upon the assurance of Mr. Farr that his prices were reasonable, in finally consummating the contract?

A. Well, Mr. Piez could answer that better than I, since he made the contract.

Q. Unfortunately Mr. Piez is gone. I of course assume that this letter, having been signed by you, would relate to a matter you were fully acquainted with, and the letter states on page 493: "As to the last contract made in May, 1918, the price was fixed after extended conferences not only with Mr. Farr but with all of the other Lake shipbuilders and was consented to by me only upon the assurance by all of them that the price was a reasonable one." That accords with your understanding?

A. Yes.

Q. So that in spite of this assistance you had from your technical experts in the Fleet Corporation, when it came down to finally fixing a figure, you were forced to rely upon the assurance of Mr.

Farr that the price named in his contract was a reasonable price?

A. I couldn't say. All that I was concerned with was that what Mr. Farr and Mr. Mather said to me would be carried out in the contract ultimately made."

MR. WOOD: Mr. Charles Piez, who testified at the previous hearing before Mr. Roberts, being outside the jurisdiction of the court and beyond the reach of subpoena, Bethlehem offers the testimony given by Mr. Piez orally before Mr. Roberts in the previous proceedings, as recorded in the transcript between pages 667 and 711, both inclusive.

THE MASTER: The Master understands that the Government makes no objection to the offer of Mr. Piez's testimony as part of Bethlehem's case in this form?

MR. BROWN: I would prefer to put it this way, that the Government takes the position that under the law, as it understands the law, Bethlehem has a right to offer Mr. Piez's testimony, as they have offered it, and the question of the Government with respect to that offer is immaterial.

THE MASTER: As I understand the stipulations of counsel and the rules of law applicable to the joint proceedings before me as Special Master and Referee, Bethlehem would have the right to offer testimony given by Mr. Piez in the former hearing before Mr. Roberts in the form in which it is offered here, and it is therefore accepted for the purposes of this record with the same force and effect, in view

of the fact that Mr. Piez is not available for service by subpoena, as though Mr. Piez had testified before me here.

(The testimony above offered in evidence is as follows:

"CHARLES PIEZ, having been duly sworn, was examined and testified as follows:

BY MR. WOOD:

Q. Mr. Piez, what is your present occupation?

A. Chairman of the Board of the Link Belt Company.

Q. How long have you occupied that position?

A. Four years.

Q. At the outbreak of the war what were you?

A. President of the Link Belt Company.

Q. How long had you occupied that position at that time?

A. About 20 years.

Q. The Link Belt Company, as I understand it, is engaged in the manufacturing business?

A. Manufacturing and engineering.

Q. Are you an engineer?

A. Graduate of Columbia.

Q. In connection with your activities with the Link Belt Company and perhaps before, have you engaged in that profession?

A. I was chief engineer of the company for a while.

Q. Were you connected with the Emergency Fleet Company during the war?

A. Yes, sir.

Q. When did that connection begin and in what capacity were you connected with the Fleet Corporation?

A. My first connection with the Fleet Corporation was as a member of the Committee of Three appointed by Mr. Hurley to investigate the progress of work in the shipyards. That was in September, 1917, and we made our report. Early in November I joined the Fleet Corporation permanently as vice president, and later on as vice-president and general manager.

Q. Do you recall when you were appointed general manager?

A. I followed Admiral Harris as general manager. He resigned the 17th of December, and I think I was appointed that day or the next.

Q. It was about the 15th of November when you became vice president?

A. About that.

Q. Were you also a member of the Board of Trustees?

A. For a time, until Mr. Schwab joined us.

Q. When did you become a member of the Board of Trustees?

A. Soon after my election as vice president.

Q. In January, 1918, you were vice president and general manager and a member of the Board of Trustees?

A. Yes.

Q. What were your duties as vice president during the period from your first appointment in November until you also became general manager?

A. Complete executive charge of the affairs of the Fleet Corporation with the exception that I lacked the power to negotiate contracts, which was vested in the general manager.

Q. Then, when you became general manager on the 17th or 18th of December, the power to negotiate contracts was also vested in you?

A. Yes.

Q. Prior to that time, although the power to negotiate was vested in the general manager, were you required to approve the contracts?

A. Yes, sir. I had the power to sign them. I was the only officer outside of Mr. Hurley that had that power.

Q. Having the power to sign, you had the power to disapprove as well as to approve and sign?

A. Yes, sir.

Q. Mr. Piez, I want to ask you whether in your opinion, in the latter part of 1917 and the early part of 1918, it was impracticable to estimate within a reasonable percentage what would be the actual cost of construction of ships to be contracted for or being contracted for by the Fleet Corporation?

A. In my opinion, it was absolutely impossible to properly estimate the cost of any construction, including ships during that period—accurately to estimate.

Q. That is your opinion now?

A. Yes.

Q. Was that your opinion then?

A. Yes.

Q. Can you tell us why?

A. We had a very conspicuous example at Hog Island. Estimates for Hog Island were prepared, I think, in June, which amounted to $27,000,000. When I came with the Fleet, we had spent about fifty million. The yard cost about sixty or seventy million to complete.

Q. That was one of the first situations that came under your observation?

A. Yes, it was a very important situation, too.

Q. Had you previous to that had some experience of your own as to the uncertainties of estimates?

A. I was at that time president of the Electric Steel Company of Chicago, in addition to my duties as president of the Link Belt Company. We found it necessary to extend our plant. Mr. Frank Chase was the industrial architect and engineer. He made us a price of $150,000 for the extension. My boy came down to me in December and said it looked as if the actual cost would be in the neighborhood of $385,000, which proved to be so and we did put in considerable additional money.

Q. When was it that the original estimate had been made?

A. I think about August or September.

Q. Of 1917?

A. Yes.

Q. In December you learned that the cost would be more than double that, as it proved to be?

A. Yes.

Q. You say the name of the man who made the estimate was what?

A. Frank D. Chase.

Q. Was he a competent industrial engineer?

A. A very competent man, yes. He is still in business.

Q. After you took up your duties as vice president of the Fleet Corporation, in addition to the Hog Island situation, was there any other situation that came under your observation that illustrated the difficulty of estimating within a reasonable percentage the actual cost of construction?

A. I don't recall any at this time.

Q. Some wooden ships had been contracted for?

A. In the case of the wooden ship program, I

think contracts were let before I entered the Fleet Corporation, of some 180 on the Atlantic Coast. The contract was let by the Fleet Corporation as I understand, for 300,000 per Hull. Of those ships built on the Atlantic Coast, not a single one cost less than $475,000.

Q. What were some of the elements that made it impracticable to estimate the actual or probable cost within a reasonable amount?

A. Conditions were all adverse to stability. Every possible condition was adverse to it. Labor was uncertain. A very considerable part of labor had been withdrawn into the Army, and the men that were left were incompetent or inexperienced, and the pressure for output was very severe so that all the industries were running at top speed, and it was absolutely impossible to get any efficiency out of labor. Material costs were going up.

Q. It appears in evidence that with the exception of a contract dated December 31st, 1917, for the construction of two or three troop ships on the basis of cost-plus, all of the contracts entered into between Bethlehem and the Fleet Corporation were on the basis price plus a fixed fee plus a percentage of savings. In your capacity as vice president or as vice president and general manager or both, did you give consideration to the form of contract to be entered into?

A. Yes, sir.

Q. Did you consider particularly the merits or demerits of this form of contract as contrasted with others?

A. I did.

Q. In your opinion, was that form of contract a form of contract advantageous to the Fleet Corporation?

A. Under the conditions that then obtained, yes.

Q. Did you so regard it at that time?

A. I did, or I would not have signed it.

Q. What were the advantages that accrued to the Fleet Corporation growing out of that form of contract at that time?

A. In the first place, it was an elastic contract that permitted us to make changes during the conduct of the work. In the second place, it provided for taking up any extraordinary expense that might happen. It provided also for a very probable inefficiency of labor that was very hard to compute, and altogether put the Government on the basis of getting its ships from the Bethlehem and certain other yards at costs plus a reasonable profit, and lastly, gave the shipbuilders an incentive to do their very best.

Q. By that you mean what?

A. Use their ingenuity to make a larger profit, and incidentally make a lower cost for the Fleet Corporation.

Q. That was an advantage attributable to the cost-plus form of contract?

A. Yes, sir. At that time the cost-plus form was inadequate.

BY MR. ROBERTS:

Q. Why?

A. Because it placed no limitation on cost, which would be an incentive to make things cost more.

Q. You presume that under a cost-plus contract also there is no incentive for the builder to get done?

A. Yes.

BY MR. WOOD:

Q. I wanted to ask you whether that form of contract, in addition to providing an incentive for sav-

ing, provided an incentive for expedition of completion of work?

A. Yes.

Q. That was a very important situation with which you were then faced?

A. Yes. There were two ships placed on a cost-plus basis. They were supposed to be hospital ships. There we had no chance at all to make up any kind of estimate, even an approximate one.

Q. Had you prior to that time had experience with similar forms of contract in your own business, or contracts working on the same principles?

A. Participation clause of contract. We have two kinds of payment—three kinds, really—day rate, piece rate, and premium rate. The premium rate is based on the partition of savings. A group of men usually are given a number of hours to complete the job, and then get either fifty or sixty per cent. of the time they save, and get paid for that. That is exactly the same form of contract used here.

Q. It becomes an incentive contract?

A. Yes.

Q. As a result of your observations in working out contracts of that description, had you formed any conclusion as to the relation of the base price to be fixed with what might be called a close estimate of bare cost, whether at such estimate or in excess of such estimate?

A. The price had to be placed for actual cost, if we knew the cost, plus an allowance for contingencies, plus an allowance for incentive, plus the fee. So we start out with the bare cost; then in order to meet any contingencies that may happen, add some allowance for contingencies; in order to give

a proper incentive, add an incentive allowance; and then add the fee.

Q. That is to say, if I properly understand you, and I do not want to put words in your mouth, the advantages that were anticipated to accrue under this form of contract would be dissipated unless the base price was a figure sufficiently high to afford a reasonable opportunity of saving under that base cost?

A. You must provide the incentive.

Q. That is the way the incentive was provided?

A. Yes.

Q. Did you know that the Bethlehem was under contract with the Navy for the construction of destroyers under this same form of contract?

A. Yes, sir.

Q. And in reaching your conclusion that this would be an advantageous form of contract, did you consult with representatives of the Navy?

A. I did, with Frank Roosevelt and Admiral Taylor.

Q. To what extent did that influence your judgment?

A. We were about to place contracts with Fore River, who had some contracts with the Navy, and I did not want two different contracts with the same customer in the same Yard.

Q. Why was that?

A. If we had placed lump sum contracts on the Fore River Yard, there might have been a possibility of charging to the lump sum contracts certain of the expense that properly belong to cost-plus contract.

Q. And vice versa?

A. Yes.

Q. So that in your opinion it was a further advantage to have the Navy Contract and your contracts on the same basis?

A. Yes. You see, the Bethlehem contracts were not the only contracts of that kind. We have contracts with the Newburg Shipbuilding Company, the Hog Island Company, and others. They were all on that same basis of cost plus participating savings plus a fee.

Q. Can you illustrate to us by some very simple calculation the advantage of that form of contract?

A. I think I can point out the fact. Let us assume a lump sum contract of $2,200,000, based on the cost of two million dollars and a profit of ten per cent. in comparison with the cost plus a participation of savings plus a fee. Assuming two million dollars as the base price, and an actual saving of $300,000, which I think was about the sum of some of the Bethlehem contracts, then the total cost would be $1,700,000, that is, the two million less the $300,000, plus half the savings, or $150,000, plus the fee of $200,000 which makes a total of $2,050,000, against $2,200,000. Yet in this case the profit is ten per cent., and in the other case the profit is twenty-two per cent.

BY MR. ROBERTS:

Q. In the lump sum contract the profit is ten per cent.?

A. Yes.

Q. In the other one the profit is twenty-two per cent.?

A. Twenty-two per cent., because you are figuring on a very much lower basis.

BY MR. WOOD:

Q. The net cost to the Fleet Corporation is less?

A. $150,000 less.

Q. What would you say as to this form of contract if the base price had been fixed down at something like your assumed actual cost of $1,700.00?

A. The probability is that without an incentive the cost would have gone up.

Q. What about the time of delivery?

A. That would have suffered likewise.

Q. The time of delivery would have been lengthened? A. Yes.

MR. WOOD: We desire to offer in evidence a memorandum from Mr. Piez to the Board of Trustees of the Fleet Corporation, dated October 9th, 1918, to be found beginning at page 494 of the printed documents.

MR. BROWN: There is no objection.

MR. ROBERTS: It is admitted as B-6 as a physical exhibit.

BY MR. WOOD:

Q. Mr. Piez, just to refresh your recollection, you recognize this memorandum which has been introduced as Exhibit B-6 as a report and recommendation to the Board of Trustees relating to a contract made in the autumn of 1918 with the Bethlehem Shipbuilding Company for the construction of certain troop ships, do you not (showing to witness)? A. Yes, sir.

Q. It appears from that memorandum, in respect of the contract then under consideration, which may be identified in the record as contract No. 465, Bethlehem had submitted detailed estimates of the cost of those ships. That is correct, is it not?

A. For the West Coast, yes.

Q. Those estimates were made in the same de-

tail in which estimates are customarily made? Is that right?

A. I presume so. I don't remember that detail.

Q. As appears from that memorandum, they were turned over to somebody in the Fleet Corporation to check, a Mr. Cox?

A. Yes.

Q. Without assuming any further what was done with that particular contract, I would understand from your memorandum that by sometime in the spring of 1918 you, or someone else or the Board had reduced to a formula the matter of determining the relation between the base price, or what is called the estimated cost of contracts of this description entered into, and the bare cost of the ships as closely figured? Is that right?

A. Yes.

Q. Had such a formula been devised in December, 1917, or January, 1918?

A. That formula is inherent in that type of contract.

Q. But you seem to have reduced it to a percentage basis here. You had not reduced this to any percentage basis as early as December, 1917?

A. This was a development.

Q. You were still considering these contracts working on the same principle disclosed in this memorandum?

A. Yes. There had to be an incentive, that had to be added to the bare cost.

BY MR. ROBERTS:

Q. There had to be a spread between the bare cost and the so-called base cost?

A. Yes.

BY MR. WOOD:

Q. You were not an experienced ship builder?

A. I wouldn't call myself that, no, at that time. I might have qualified after I got out.

Q. You really have not had any experience of your own?

A. We built ship unloading, and unloading machinery.

Q. Were there men associated with the Fleet Corporation who had had practical experience in ship construction?

A. Yes.

Q. Who were those men?

A. The head of our construction department was Admiral Bowles, a graduate of Annapolis, builder of the White Squadron, president of the Fore River Ship Building Company I think for five or six years; his First Aide in the technical department was D. H. Cox, a very well known marine architect and engineer. There was August Pryor, a graduate of Annapolis; George Radford, a graduate of Annapolis.

Q. Was there a man by the name of Ferris?

A. Yes, Theodore Ferris was the head of our designing department.

Q. Was he an experienced naval architect?

A. Very.

Q. Did you regard these men as competent shipbuilders?

A. I did.

Q. They are the men you relied on for technical advice in respect of ship construction and costs? Is that correct?

A. Yes, sir.

Q. As proposals for tonnage were made by Bethlehem or other builders and prices submitted, whether on this form of contract or on a lump sum bid, what was the ordinary course or practice of the Fleet Corporation in connection with those submissions?

A. They were submitted to Captain Radford, head of the contract division.

Q. They were submitted to him to be examined, analyzed, and checked?

A. Yes. He passed them on to the technical division.

Q. Do you know whether or not these particular proposals went through that course? I am referring particularly to Bethlehem's letter of December 19th, 1917.

A. They did. The memorandum recommending the closing of the contract was signed by Admiral Bowles and Captain Radford.

BY MR. ROBERTS:

Q. The memorandum recommending the signature?

A. The memorandum suggesting the closing of the contract was signed by Admiral Bowles and Captain Radford.

BY MR. WOOD:

Q. It is your understanding that prior to passing the matter up to you, these prices had been checked and analyzed by Bowles and Radford, and those who were working with them?

A. I don't know how closely they were analyzed. They were checked up in the usual way.

Q. That was one of their duties?

A. One of their duties. That was the regular process through which every contract was signed.

Q. The memorandum to which you refer is the memorandum which has been offered as G-117, to be found at page 258 of the printed documents, and dated January 5th, 1918?

A. Yes, sir.

Q. Subsequently you signed the letters which have been offered in evidence respectively as G-118, G-119, and G-120, and which in the printed documents immediately follow the memorandum of January 5th, awarding these contracts to Bethlehem at the prices named?

A. Yes, sir.

Q. In point of fact, those letters were prepared by Bowles and Radford and submitted to you with their memorandum of January 5th?

A. Yes.

Q. Do you recall whether after the receipt of that memorandum and before releasing the letters which accompanied it, you yourself made a check of any of the base prices that were specified in these letters with the prices at which contracts for the construction of other ships were being let?

A. I did.

Q. How did you make that comparison?

A. I compared the cost of two ships included in this order from the Union Plant with the prices on ships that we bought at the same time from the Moore Ship Building at Alameda. Both were under the same wage scale, as I recall it. The cost of the Moore ships ran about $245 per dead weight ton. The cost of the Bethlehem ships, including the base price plus the fee, plus the participation in savings—the base price plus the fee, which was the maximum cost of these vessels represented to the government, and found that the price quoted by Bethlehem was about $230 per dead weight ton

against $245. I think there were several other comparisons made.

BY MR. ROBERTS:

Q. Were the Alameda ships on a lump sum bid?

A. Yes.

BY MR. WOOD:

Q. That is, the Moore Ships?

A. Yes.

Q. Did that contract with the Moore Shipbuilding Company carry with it protection similar to the Bethlehem proposal?

A. Yes.

Q. So you were comparing the lump sum price that Bethlehem used for substantially the same size and type of ship with the estimated cost, the base price submitted and agreed to by Bowles and Radford, plus the fee?

A. Yes.

Q. You found that the two elements in the latter were less than the lump sum price at Moore?

A. Substantially.

Q. Do you recall whether you made any comparison with ships proposed to be constructed by the Baltimore Drydock Company?

A. Yes, but that was afterwards.

Q. I think the record shows that the Baltimore Drydock Company contract was not dated until February 25th. I want to ask you whether, notwithstanding that, either the prices had been fixed, or negotiations were virtually simultaneous.

A. There were a number of contracts negotiated pending my signature when I was made general manager. I recall that the Baltimore Drydock Company had at that time quite a number of proposals before

us. Whether they covered this particular one I don't know.

Q. Where you could find lump sum contracts for the type and size of ships that could be matched with the Bethlehem proposals, you made that character of comparison which you have described?

A. Yes.

Q. In making that comparison, what was your attitude or what was your idea as to the relationship between a lump sum contract, and those proposals, which would represent a condition satisfactory to you?

A. Well, if the cost-plus-fee-plus-participation contract amounted to the same, so far as the base cost or fee was concerned—amounted to the same or less than the lump sum, I felt we were justified in going ahead.

Q. That is for the reasons outlined in your explanation of the advantages of this form of contract? That was your policy and the mental attitude with which you approached these proposals?

A. Yes, sir.

MR. WOOD: We offer in evidence a document appearing at page 579 of the printed documents, being an extract from the minutes of the meeting of the Board of Trustees of the Fleet Corporation on May 2nd, 1918.

MR. BROWN: We have no objection.

MR. ROBERTS: It is received in evidence as B-7.

BY MR. WOOD:

Q. Mr. Piez, I show you this extract from the minutes, from which you will note that there has been spread upon the minutes a letter from Mr.

Schwab to the president and trustees of the Fleet Corporation, asking in effect that someone other than himself be designated to handle all business transactions between the Fleet Corporation and the Bethlehem Companies whose names are designated in the letter, followed by a resolution that all contracts be submitted to the Board for approval. It does not say anything about the execution, but that such contracts be approved by the vice president. Was that yourself or some other vice president?

A. That was in confirmation of a general understanding we had with Mr. Schwab when he decided to come in.

Q. A confirmation of an understanding you had with him at the time he decided to come in?

A. Yes.

Q. Do you recall when that understanding was reached?

A. Not exactly; about the middle of April. Mr. Schwab came down on a Sunday. We had an all day session—Mr. Hurley, Mr. Bainbridge Colby, and myself. He mentioned the difficulties and the dangers he would subject himself to if he took an executive position with the company, that we had a great many contracts. Finally, after an all day session, he decided to come if the President would assure him that he would not stultify him in accepting that position.

Q. It was an understanding reached that if he came it would be on the assumption that he was to be relieved from all contract or activity in connection with the Fleet Corporation, and that some one else would be delegated to represent the Fleet Corporation in all dealings with Bethlehem? Is that right?

A. Yes, sir.

Q. Did Mr. Schwab keep his part of the bargain?

A. He certainly did.

Q. Did he during his term of office as Director-General—

A. He abstained from contracts.

Q. And had no business dealings with Bethlehem?

A. He had no business dealings with Bethlehem. He concerned himself very little about contracts; he concerned himself more about the morale of the men in the yards.

Q. During the period Mr. Schwab was director-general, what officer of the Fleet Corporation took on chiefly the responsibility of any business dealings between the Fleet Corporation and the various companies?

A. The vice-president.

Q. You mean yourself?

A. Myself; yes, sir.

Q. In discharging your duties in connection with business dealings with Bethlehem, were you influenced in any degree by the fact that Mr. Schwab was director-general of the Fleet Corporation and also connected with Bethlehem?

A. Not a bit.

Q. Can you give us any illustration of the complete independence of action that you exercised in connection with that matter?

A. We had a contract with Bethlehem for the construction of what is known as Liberty Yard. It involved an expenditure of about twenty millions. Also the construction of about ten troop ships, which involved an expenditure of about forty millions. There was some difference between us as to the cost of construction, and I cancelled the order for the

yard without consulting Mr. Schwab or asking him or telling him. I simply telephoned Mr. Hurley that it seemed to me a wise thing to do, and he authorized that procedure. A few days after that the entire contract of sixty million dollars was cancelled.

Q. Mr. Schwab was never consulted about that?

A. He never wanted to be consulted. He never wanted to hear anything about it.

Q. I want to ask you a question or two about your dealings and relations with Mr. Powell. Was there any confidential relation of any character that existed between Mr. Powell and yourself, any position of trust and confidence?

A. Powell always struck me as a very capable man and a shrewd bargainer.

Q. What I want to ask you is whether your dealings with him were at arm's length as have been your similar dealing in your business career with other people with whom you were dealing.

A. Oh, we were very close. I went to him for advice, as I did with Homer Ferguson. They were always ready to extend information and assistance to me in my early days of inexperience.

Q. But you made up your own mind in questions submitted to you?

A. I always have.

MR. WOOD: We offer in evidence a contract between the American Shipbuilding Company and the United States Shipping Board Emergency Fleet Corporation dated October 24th, 1918, which has been produced by counsel for the Fleet Corporation under call, together with three letters or memoranda thereto attached.

MR. BROWN: We have no objection.

MR. ROBERTS: It is received in evidence as a physical exhibit and marked B-8.

BY MR. WOOD:

Q. I show you, Mr. Piez, a memorandum from Mr. Schwab to Mr. Hurley dated October 2nd, 1918, which has been offered in evidence as Exhibit G-160. As you will observe from this memorandum, it is a memorandum reporting to Mr. Hurley that an agreement had been reached with Mr. Farr, who the record shows was president of the American Shipbuilding Company, for modification of certain contracts that the American Shipbuilding Company had with the Emergency Fleet Corporation. I now hand you an exhibit which has just been introduced as Ex. B-8, together with its attachments and ask you whether you recognize the contract contained in Ex. B-8 as the contract which eventuated from the agreement referred to in Mr. Schwab's memorandum of October 2nd?

A. Yes, sir.

Q. This contract, B-8, contains certain stipulations and certain details of settlement not referred to in Mr. Schwab's memorandum of October 2nd. I notice the contract is executed by you on behalf of the Fleet Corporation. Did you negotiate its final terms with the American Shipbuilding Corporation, or were they negotiated by somebody else?

A. Negotiated by our general counsel.

Q. And that was—

A. Chester Cuthell.

Q. As appears from the contract and from Mr. Schwab's memorandum, both relate to a modification of certain contracts then in existence, that is, in existence on October 2nd, 1918, between the Fleet

Corporation and the American Shipbuilding Corporation?

A. Yes, sir.

Q. And Mr. Schwab's memorandum says that Mr. Farr, the president of the American Shipbuilding Corporation consented to have his contracts modified so that his profits were to be ten per cent. on costs, or something to that effect. Had you had anything to do with the negotiation with Mr. Farr of the contracts which were modified by Exhibit B-8, the modification of which is spoken of in Mr. Schwab's memorandum?

A. Yes, sir.

Q. Will you please tell us about those negotiations and any representations that may have been made at that time by Mr. Farr?

A. Negotiations had been carried on by Admiral Capps. At the time I went with the Fleet Corporation I was asked to sign forty individual contracts covering forty ships some time near the end of November.

Q. November, 1917?

A. November, 1917. At that time Admiral Capps passed the recommendation over to me with the statement that he thought the prices were rather high. I questioned Mr. Farr about that, and he said after some pressure that they had decided to limit their profits to ten per cent. and some time after that produced a resolution by their Board advising us of that fact.

Q. So that this modification was only in confirmation of his own representations at the time that the contracts modified were made?

A. Yes, sir.

Q. If that was Mr. Farr's purpose at the time of

the original contracts, which I understand were on a lump sum basis, why wasn't it written into the contracts? Did Mr. Farr give any explanation?

A. Yes. He did not want to subject himself to audit processes of the Emergency Fleet Corporation.

Q. Mr. Piez, are you able to state whether during Mr. Schwab's term of office there was any policy upon the part either of himself or of the Fleet Corporation to limit contractors to a ten per cent. profit on the cost of ships built?

A. There was no policy of that kind at that time.

Q. If there had been such a policy, you would have known it?

A. Absolutely.

Q. I want to ask you whether you were very much concerned at that time in view of the Excess Profit tax with the profits that might be realized by the shipbuilders?

A. We thought that the Excess Profit tax and the War Profit tax would take care of any excess profits. That is why they were passed by Congress.

Cross Examination

BY MR. BROWN:

Q. Mr. Piez, you had nothing to do personally with the negotiation of the revision of the American Shipbuilding contract?

A. Not the revision.

Q. That was a matter which Mr. Schwab handled himself?

A. Mr. Cuthell handled it.

Q. Mr. Schwab did not participate in that in any way?

A. Not that I know of. He signed the letter.

Q. Were you in favor of that revision of the American Shipbuilding contracts?

A. I was.

Q. Did you participate in the negotiations which led to the reduction of those prices?

A. No, sir.

Q. As I understand it, when you went with the Fleet Corporation in November, 1917, you had not had any shipbuilding experience? Is that correct?

A. That is right.

Q. You became general manager of the Fleet Corporation December 17th, 1917?

A. About that time; yes, sir.

Q. It was about that time that you were engaged in these negotiations with the Bethlehem representatives with a view to entering into the contracts for the additional tonnage, was it not?

A. Most of those negotiations were carried on by Captain Radford and Mr. Bowles. It came up to me for final decision.

Q. Did you participate in any of the conferences at that time with representatives of the Fleet Corporation?

A. Perhaps in the final conference.

Q. But you were familiar with their proposals, were you not, which have been offered in evidence?

A. Yes, I had several sessions with Admiral Bowles and Radford.

Q. What was the condition of the Fleet Corporation with respect to whether or not it was overwhelmed with work at the time you became general manager in December, 1917?

A. It was thoroughly snowed under with work.

Q. These proposed Bethlehem contracts were but

one of a great number of very important matters you had crowding your attention?

A. Yes, sir. We had four general managers in four months.

Q. How do you account for that? The pace was too great?

A. I am too modest to say.

Q. You, as well as your whole organization in December, 1917, as I understand it, were literally swamped with work, and it is true, is it not, that neither you nor any other of your organizations had very much time to devote to consideration of any particular contract that was presented to you for consideration?

A. Radford was not very much pressed. Admiral Bowles and Radford handled this and gave it a very considerable amount of time.

Q. They were not occupied with other matters?

A. Captain Radford was not. Admiral Bowles was pretty well occupied.

Q. Do you know of your own knowledge what Admiral Bowles did in the way of checking up the proposals submitted by the Bethlehem Company?

A. Bowles reported several times to me while negotiations were going on.

Q. He reported that Bethlehem were reluctant to build tank ships and were only persuaded with the greatest difficulty to build such ships?

A. Yes.

Q. He also reported, did he not, that the prices submitted by Bethlehem, and as finally reduced after a process which has been described by counsel for Bethlehem as a jewing down process, were still too high and unsatisfactory to Messrs. Bowles and Radford?

A. Yes.

Q. And at the time they made that report to you, you had in your possession, had you not, a letter from Mr. Powell in which he states—I am referring to page 257 of the Concession of Documentary Evidence, Exhibit G-116—"We further refer to my conference with the vice-president and general manager of the Emergency Fleet Corporation on Friday the 21st ultimo. This will confirm the statement then made that while this company cannot undertake any capital expenditures at its expense, if the terms in our proposal do not otherwise meet the Emergency Fleet Corporation's approval, we are prepared to accept the order to construct these vessels on such terms as may be personally determined by Mr. Charles Piez, the vice-president and general manager, and strongly urge there be no delay in placing this order, as we are making this offer because of our knowledge of the vital emergency now confronting this nation in connection with the requirements for additional merchant vessels." You had that letter in your possession, did you not?

A. Yes, sir.

Q. What did you do with that letter in your possession with respect to the report of Messrs. Bowles and Radford that the prices which Bethlehem insisted on, even as reduced, were still too high?

A. Probably endeavored to get another reduction.

Q. You probably endeavored to get another reduction?

A. That would be the natural thing to do.

Q. Did you do that yourself?

A. I don't recall.

Q. You do not recall whether you attempted to get another reduction or not?

A. I am pretty sure I must have.

Q. Whom did you see?

A. I probably had another session with Mr. Powell.

Q. You had great confidence in Mr. Powell's business ability and experience, as well as in his integrity, did you not?

A. Yes, sir.

Q. When Mr. Powell insisted that these prices were fair and reasonable, you relied on what Mr. Powell told you in that respect?

A. Yes, and on my own judgment.

Q. And at the time of that reliance, you had also been advised by the general counsel of the Fleet Corporation, had you not, that regardless of what prices were named in these contracts, if they should afterwards appear to be excessive, under existing legislation it was the right of the Fleet Corporation to reduce those prices so as to afford only just and reasonable compensation?

A. Yes, sir.

Q. That was the advice Mr. Cuthell also gave to Mr. Schwab?

A. Probably. I don't know.

Q. Wasn't it the same advice on which all executives of the Fleet Corporation were proceeding at that time?

A. Mr. Schwab had little or nothing to do with the revision of contracts or making of contracts.

Q. But Mr. Cuthell did give such advice to you?

A. Yes, I knew that from reading the statute.

Q. In other words, you proceeded in all these

negotiations on the assumption that such advice was correct?

A. Yes.

Q. You were more concerned at that time, were you not, with getting ships built, due to the urgency of the situation, than any investigation whether or not the representations of Mr. Powell, in whom you had complete confidence, were correct or incorrect?

A. There was no time for haggling. I might add to that that I was put in there to get things done.

Q. You had a tremendous mass of work to do, and if these ships were to be built, it was up to you to make the best terms possible and to come to some agreement in order that the progress should be commenced?

A. Absolutely. Negotiations had been going on for some months prior to my coming.

Q. Of course, your memory is necessarily vague after so many years, but I do not think you mean that negotiations with respect to these contract ships had been pending for many months?

A. No, stock ships.

Q. The first proposition with respect to these contract ships was made December 13th, 1917?

A. Yes.

Q. As time went on, during April and May, 1918, the Fleet Corporation was much more organized than in December, 1917?

A. Improving steadily.

Q. You probably had more time to devote to the question of prices than you had in this earlier time in December, 1917?

A. We had built up our organization.

Q. As I understand this form of contract, known as the half-saving contract, it was contemplated

that the half savings would turn on Bethlehem's ability to stimulate labor?

A. Stimulate the entire organization.

Q. And the steel prices in December, 1917 had been fixed by agreement between the War Industries board and the steel manufacturers at prices that were satisfactory to manufacturers at that time, had they not?

A. I think so.

Q. Those prices were such as allowed any efficient steel producers a reasonable profit?

A. Yes.

Q. That was in order to insure maximum production?

A. Yes.

Q. So that efficient steel manufacturers would probably be enabled to obtain a very liberal profit on the basis of those prices?

A. Yes.

Q. A large part of the plates and shapes that went into the contract ships were made by Bethlehem Steel Company, were they not?

A. I don't know as to that.

Q. There was no anticipation in December, 1917 or in fact at any time during 1918 that there would be an increase in these steel prices which had been fixed by agreement between the War Industries Board and the steel manufacturers?

A. I don't know as to that.

Q. Did you at that time hear of any dissatisfaction with the prices?

A. Not that. There was considerable doubt as to whether they could produce steel enough to take care of our needs.

Q. Bethlehem could very readily have obtained

from the Fleet Corporation protection as to all their material requirements, if they had so desired or requested, could they not?

A. I don't know as to that.

Q. Weren't you in charge, when you became general manager, of these contracts?

A. Yes, but many of those things never came up to me for decision.

Q. Weren't you giving material protection in other contracts?

A. I think on lump sum contracts, but not on cost-plus participation.

Q. Was that because it was not requested in the latter form of contract?

A. I can't say that.

Q. Can you think of any reason why you would not have given material protection if they had given you the unit prices and requested protection?

A. I can't say that.

Q. You cannot think of any reason why you would not have given such protection if they had requested it and stated the unit prices as the basis of their estimate?

A. I don't recall anything tending toward that question.

Q. As far as you remember—

A. I don't remember; that is the trouble. That was a very minor affair in those days.

Q. The material item was a very minor consideration?

A. The whole question of price lay with other departments; lay with the War Industries Board largely.

Q. In other words, the Government through its many agencies at that time was in a position to

regulate material prices by a system of allotment and otherwise?

A. Yes, but they did that very cautiously.

Q. But through their priority orders and control of transportation and control of raw materials they were in position to more or less regulate the prices of such materials as would go into the shipbuilding program?

A. The War Industries Board, as nearly as I can recollect, did not begin to function well until February or March, 1918, when Mr. Bernard Baruch took charge. Before that there was the Council of National Defense. They did not function very effectively, and it was not until Baruch and Alexander Lake took part that they began to exercise any control over these things.

Q. There has been quite a question raised by Bethlehem with respect to items of materials. I want you again to think if you can recall any reason why, if Bethlehem had requested from you material protection with respect to these contracts and had stated the unit prices of materials used as the basis of estimates, you or the Fleet Corporation would not have given them such protection.

A. My memory is very bad. I cannot project myself back to the situation which existed, and answer that question intelligently.

Q. At the time of your connection with the Fleet Corporation, it was always understood that Bethlehem was to be permitted to build duplicates of ships already in construction?

A. That was the quickest way of arriving at results. They were subject, of course, to revision by the technical department of the Fleet Corporation.

Q. Your first consideration of the half-saving

form of contract in connection with the Bethlehem contracts was the result of Mr. Powell's letter of December 13th, 1917, which has been offered in evidence as Exhibit G-104 and of which I now show you the part which appears on page 202 of the Concession of Documentary Evidence?.

A. Yes, sir.

Q. It is a fact, is it not, Mr. Piez, that all the Fleet Shipbuilding contracts, including the Bethlehem contracts, were executed in pursuance of the authority conferred on the Fleet by the President under Executive Orders referred to at pages 632 and 638 of the Documentary Evidence, dated July 11th, 1917 and December 3rd, 1918, which I ask you to now look at?

MR. EVANS: That is objected to as asking the witness to state a conclusion of law.

MR. ROBERTS: The objection is sustained.

BY MR. BROWN:

Q. Mr. Piez, in executing all shipbuilding contracts on behalf of the Fleet Corporation, whether Bethlehem contracts or otherwise, did you assume you were acting in pursuance of those Executive Orders of July 11th, 1917 and December 3rd, 1918 which I have referred to?

A. I always understood that that—

MR. EVANS: We object to the witness stating what was understood.

MR. BROWN: Will you repeat the question?

(Question repeated as follows: "Mr. Piez, in executing all shipbuilding contracts on behalf of the Fleet Corporation, whether Bethlehem contracts or otherwise, did you assume

you were acting in pursuance of those Executive Orders of July 11th, 1917, and December 3rd, 1918 which I have referred to?")

THE WITNESS: I assumed I was working under the authority delegated to me by the Emergency Fleet Corporation.

BY MR. BROWN:

Q. And in turn the authority delegated to the Emergency Fleet Corporation by the President under the Executive Orders referred to?

A. Yes.

Q. And all moneys paid out by the Fleet Corporation to shipbuilders, including Bethlehem, were moneys which were specifically appropriated by Congress?

MR. WOOD: That is objected to as not the best evidence.

MR. ROBERTS: I will have to sustain the objection and grant an exception to the Government.

BY MR. BROWN:

Q. Mr. Piez, will you tell us whether or not during the time of your connection with the Fleet Corporation the moneys paid by it to shipbuilders, including Bethlehem, were moneys which were appropriated by Congress for that purpose?

MR. EVANS: That question is objected to as not the best evidence.

MR. ROBERTS: Mr. Brown, I think the objection is technically sound.

MR. BROWN: May I change it and say "appropriated by Congress"?

MR. ROBERTS: I think the best evidence of that is the drafts under the appropriation.

(Discussion off the record.)

BY MR. BROWN:

Q. Mr. Piez, in comparing prices, I think you mentioned a contract between the Moore & Scott Iron Works and the Fleet Corporation, did you not?

A. The Moore Shipbuilding Corporation.

Q. Would that be Moore & Scott?

A. I think so.

MR. WOOD: They are two different concerns.

MR. BROWN: They changed their name subsequently.

BY MR. BROWN:

Q. I show you what purports to be a contract between the Moore & Scott Iron Works and the Emergency Fleet Corporation, dated December 31st, 1917, being contract 153, and ask you if that is the contract to which you referred (showing to witness).

A. That was a lump sum contract on December 31st, 1917, according to the report I made to the Board.

BY MR. ROBERTS:

Q. What was the tonnage?

A. Ten thousand tons.

Q. What is the contract number?

A. 153. There were two contracts, one for two and one for four ships—tankers,—10,000 tons.

Redirect Examination

BY MR. WOOD:

Q. Mr. Piez, have you any distinct recollection of having asked Powell to reduce his prices after receipt of the Bowles memorandum on January 5th, or is that just based upon the presumption that that would have been the natural thing for you to do?

A. That is all. I think that is what I said in my testimony, that that would have been the natural thing for me to do.

Q. It appears in evidence here that Mr. Powell left for San Francisco on the night of January 3rd, after the conclusion of his conference with Bowles, and two days afterwards you received Bowles' memorandum of January 5th, and your award was dated that day and sent to the Bethlehem Shipbuilding Corporation.

A. My impression must have been wrong.

Q. There is one matter concerning which I neglected to inquire in direct examination. During your term of office as vice-president and general manager of the Fleet Corporation, did you keep in pretty close touch with the progress of the work in the yards?

A. Yes, sir.

Q. Do you recall when it was that Mr. Schwab retired as Director General?

A. He retired sometime in December. He actually retired long before that.

Q. He did not come back after the Armistice?

A. No. A little before the Armistice.

Q. Are you quite familiar with the condition of the work at the time of his retirement, and the state of the accounts of the Bethlehem contracts, in a general way?

A. My impression is that they were about a third completed.

Q. Would it have been possible up to the time he retired to determine the profits that Bethlehem was likely to make under these contracts?

A. No, sir. No costs had been completed. None were completed at the time I left, at the end of April, 1919.

Q. Even at the time you left, there was no way of ascertaining what the profits on these contracts were going to be?

A. No, sir. This question was never mentioned.

Q. You are familiar with the condition in the yards up to the time you left?

A. Yes, sir. There is a full report in here as to the status of each ship in each yard.

Q. That includes conditions both before and after the Armistice?

A. Yes.

Q. Based on your knowledge of those conditions before and after the Armistice, have you any opinion as to whether or not Bethlehem would have realized the profits which were made under these contracts except for the termination of the war?

A. I don't think they would have.

Q. Why not?

A. Because things changed very decidedly. Overtime work was cut out; night work was cut out; inefficient men were dropped; there was a very big cut in the payrolls; and the only efficient men were kept. I was told by Mr. Skinner in Seattle that he saved $150,000 per hull after the Armistice.

Recross Examination

BY MR. BROWN:

Q. Mr. Piez, I neglected to ask you whether Mr. Schwab, during the time he was connected with the Fleet Corporation, was the executive head of the entire organization and the man who accepted the responsibility for the final decisions that the construction division had to reach. I quote what purports to be an excerpt from testimony given by you.

A. He ranked as vice president, but in the division of work he assumed no such authority.

Q. Is that statement which is purported to have been made by you substantially correct? Shall I repeat it?

A. Yes.

Q. The Chairman asked: 'Just what did he do? He was director-general, you said, and he did not charge himself with the details. What authority and jurisdiction did he exercise? He visited the various sections of the country.'

> MR. PIEZ: Well, he was the executive head of the entire organization, the man who accepted responsibility for the final decisions that we in the construction division had to reach.'

Is that correct?

A. Yes.

BY MR. WOOD:

Q. He was never a member of the Board of Trustees?

A. No, sir.

Q. Mr. Brown calls your attention to Mr. Powell's letter to the Fleet Corporation of December 13th, 1917, Exhibit G-104, to which reference is

also made in his letter of December 19th, G-109. I ask you whether you recall having seen those letters during the course of the negotiations on the Bethlehem contracts?

A. The two letters of December 13th and 19th?

Q. Yes.

A. I am very certain I saw the December 19th; not so sure of December 13th, but in all probability I did see it.

Q. In all probability you did see it?

A. Yes."

MR. WOOD: In connection with the testimony of Mr. Piez we also desire to offer the exhibits which were offered at the time as a part of his testimony. I think, that, to a very considerable extent, those exhibits have already been offered in this proceeding prior to this time, and some of them I know have.

MR. BROWN: I assume that the offer of this testimony carries with it all the offers in evidence that went with it.

THE MASTER: It is understood by the Master that counsel agree that the Exhibits referred to in the testimony of Mr. Charles Piez and offered before Mr. Roberts in line with that testimony, are included in the record here and to be given, for the purposes of this case, the same exhibit numbers as they had there.

The same ruling will apply to any exhibits that are referred to in Mr. Schwab's testimony or offered at the time Mr. Schwab was a witness.

HARRY BROWN, recalled.

BY MR. EVANS:

Q. When you were on the stand before the Master inquired whether you had made any study to determine what the actual ratio of efficiency of labor was after December, 1917, and you said you had?

A. Yes, sir.

Q. Have you been able to lay your hands on the papers which show the results of the study that you did make and also the papers that show the basis of that calculation?

A. Yes.

Q. What yards are included?

A. Fore River at Quincy, Massachusetts, the Union plant at San Francisco.

MR. EVANS: May it be admitted that counsel for the Government have had an opportunity to examine the papers?

MR. HALLETT: No. We just had the one sheet, a yellow sheet.

BY MR. EVANS:

Q. Mr. Brown, you have handed me a white sheet, which I will ask the Master to mark for identification B-33. Tell us what that white sheet is and what it represents?

A. This represents a summary of hours for the 9100 ton tank vessels built at the Fore River plant which the keel of the first vessel was laid in April, 1915, and the last delivery made of a vessel in December, 1919.

Q. Give us the hull numbers of the vessels?

A. 244, 245, 253, 254, 268, 269, 1376, 1377, 1378, 1379, 1380, 1381.

Q. Are they all duplicate ships?

A. Substantially so.

Q. And giving the number of hours of direct labor, does that give you any idea of the relative efficiency of labor on these various ships?

A. That will give you very close to the difference of efficiency in the different periods.

Q. Were these figures made up by you or by somebody under you?

A. They were made up by a man under my direction.

Q. When, do you remember? I don't mean the day or month, but this year or last year?

A. Oh, I should say they were made in 1925 or 1926.

Q. In connection with your preparation of this case, were they?

A. Yes, sir.

Q. According to these figures what was the ratio of efficiency on labor between 244 and 245 and 253 and 254?

A. It took 8 per cent. more hours to build 253 and 254 than it did to build 245 and 244.

Q. How do you translate that into terms of any efficiency factor?

A. You would divide 100 by 108.

Q. To give you what?

A. To give you the efficiency.

Q. What do your figures show as to the relative efficiency of labor on 253 and 4 and 268 and 9?

A. 268 and 9 would be 43½ per cent. greater than 253 and 254.

Q. You mean the number of hours?

A. Number of hours.

Q. And if you want to make a comparison be-

tween your allowance of 30 per cent. as a factor of allowance for inefficiency, what is the actual factor as developed between those two groups or ships as shown by these figures you have just given us? Do you understand the question?

A. No, I don't.

Q. I want it in terms of percentage so as to get an exact comparison with your 30 per cent. which you allowed in your estimate?

A. Well 30 per cent. represents 77½ per cent. efficiency.

Q. I don't want to know what the 30 per cent. represents in terms of efficiency but I want to know what the other thing represents in inefficiency. I want the percentage to compare with your 30 per cent.

A. That is what I gave, 43½.

Q. Your percentage of increase in hours is 43½, isn't it?

A. 43½. Now I added 30 per cent. on the original figure and now that would correspond to the 43½ per cent. I am now giving you.

BY THE MASTER:

Q. As I understand it, in making up your calculation, you used 100 hours as your normal factor?

A. That is right.

Q. And add 30 hours to that, and that would be 30 per cent.?

A. Yes.

Q. Now you add to your hundred on this basis 43½ hours?

A. That is right.

BY MR. EVANS:

Q. The keel of 253 was laid down when?

A. May, 1916.

Q. And when was 253 delivered?

A. June, 1917.

Q. The keel of 254 was laid down when?

A. August, 1916.

Q. And delivered when?

A. July, 1917.

Q. Now you have grouped those two ships and taken an average, is that right?

A. Yes, sir.

Q. Now then 268, when was the keel laid?

A. June, 1917.

Q. And she was delivered when?

A. September, 1918.

Q. And 269, the keel was laid when?

A. December, 1917.

Q. And she was delivered when?

A. September, 1918.

Q. And it is between those two boats that you base your factor of 43½ per cent. increase?

A. Yes, sir.

Q. Now do your records show that on the subsequent boat your factor of inefficiency was greatly reduced, I mean on boats that were built after the Armistice?

A. Yes, sir.

Q. Until they finally reached about the same rate of efficiency as on 244 and 245; is that right?

A. Within 2½ per cent.

Q. Now this white paper was handed to Government's counsel yesterday for their examination, was it not?

A. Yes, sir.

Q. You have also produced some photostats of certain papers which have at the head of them "Bethlehem Shipbuilding Corporation, Limited,

Estimating Division." Can you tell us what those papers are?

A. They are the details of the number of hours that went into the various ships.

Q. Do they have anything to do with the figures that you have just testified to and which are summarized on Bethlehem's Exhibit B-33?

A. They are the details from which those figures have been taken.

MR. EVANS: I will ask that these papers as a group be fastened together and marked for identification Exhibit B-34.

BY MR. EVANS:

Q. I show you another tabulation on a large yellow sheet with the caption "Union plant Direct labor, hours", and I will ask you to tell us what that is?

A. That is the number of hours required to build various ships of the same size and type at Union Plant, San Francisco.

Q. Was that made up also for the purpose of determining the relative labor efficiency at various periods?

A. Yes, sir.

MR. EVANS: I will ask that this sheet be marked for identification B-35.

BY MR. EVANS:

Q. That sheet, which is marked B-35, was handed to Government's counsel yesterday for their examination yesterday, was it not?

A. Yes, sir.

Q. And they have handed it back to you today?

A. Yes, sir.

Q. When was this sheet B-35 made up?

A. Probably three or four years ago.

Q. From information furnished by the Accounting Department?

A. That is the Accounting Department sheet.

Q. Without going into this with as much detail as I did in connection with Fore River plant, will you tell us whether this shows substantially the same relation in the efficiency of labor at the several periods under discussion as the study which you made at the Fore River plant?

A. It shows a substantial variation from the efficiency.

Q. Does it show that there was a loss in efficiency on vessels which were completed prior to the Armistice?

A. Yes, sir.

Q. And on vessels which were completed following the Armistice, or on which the bulk of the contract labor was done during the period following the Armistice shows a progressive increase in efficiency; is that correct?

A. Well they are the vessels most of the work was done on prior to the Armistice. I don't think there were any vessels on there completed at Union that would reflect the increased efficiency of labor after the Armistice. The ships on there were completed prior to May, 1918.

Q. For purposes of illustration, will you take two boats there and tell us what was the effective construction date, borrowing Mr. Sanford's phrase, and give us the comparison of efficiency between two boats having a different effective date of construction. Have you got that figure there?

A. No, I have not.

MR. BROWN: Put it in in the form of a statement tomorrow.

THE MASTER: Exhibit B-33, which has now been offered in evidence without objection on the part of the Government, is admitted and is as follows:

BETHLEHEM SHIPBUILDING CORPORATION, Ltd.

Estimating Division

4-3-31 WCM M&R

9100 TON Tankers

Hull No.	Keel	Del.	Hours Each	Rel. to 1244	
1244	Apr. 1915	Feb. 1916			
1245	June 1915	Apr. 1916	764,810		
1253	May 1916	June 1917			
1254	Aug. 1916	July 1917	824,142	1.08	
1268	June 1917	Sep. 1918			
1269	Dec. 1917	Sep. 1918	1,158,365	1.515	
1376	Fb. 1919	July 1919			
1377	May 1919	Nov. 1919	870,820	1.14	783170
1378	Mar. 1919	Sept. 1919			
					2½%
1379	Apr. 1919	Oct. 1919			
1380	May 1919	Nov. 1919	695,519	.91	
1381	May 1919	Dec. 1919			

THE MASTER: As I understand it, counsel want to reserve cross examination until they can look at these papers.

Offers in Evidence by the Government.

MR. BROWN: I now offer in evidence Exhibit offered in the preceding hearing as Exhibit G-16, as a physical exhibit, which is a statement showing the officers and directors of the various Bethlehem Companies.

THE MASTER: Unless there is objection noted as these exhibits are offered they will be received and given the same Exhibit Number for this case as they were before Mr. Roberts.

MR. BROWN: I offer in evidence the following exhibits; G-4, G-5, G-7, G-8, G-9, G-10, G-11, to G-45 inclusive with the exception of the following, which are already in: G 21, G 22, G 26, G 32, G 33, G 34, G 34½, G 35, G 36 G 37, G 38, G 43, G 44, G 45.

I also offer the following exhibits which appear in the Concessions of Documentary Evidence: G 47, G 51, G 52, G 53 G 54, G 58, G 59, G 60, G 61, G 62, G 63, G 66, G 96, G 97, G 101, G 105, G 110, G 113, G 114, G 115, G 122, G 124, G 125, G 126, G 127, G 128, G 130, G 131, G 133, G 134, G 135, G 146, G 148, G 149, G 150, G 152.

Further Exhibits which are to be included in the record: G 159, G 161, G 163 (physical), G 168, G 169, G 170, G 172 (physical), G 175, G 178.

Further Exhibits appearing in Concession of Documentary Evidence, G 193, G 194, G 195, G 196 (physical), contract between American Shipbuilding Corporation and Emergency Fleet Corporation, being one of the original lump-sum contracts which is admitted to be substantially similar to all of such contracts.

Also Exhibit G 197, Statement of Facts which Bethlehem counsel concede to be a correct statement; and Exhibit G-198, (physical).

Also, as G 208, appearing in the Documentary Evidence; Letter dated Sept. 25, 1918, addressed by Chester W. Cuthell to Bethlehem Shipbuilding Corporation, Ltd.; and, as G 209, Letter dated Sept. 26, 1918, addressed by J. W. Powell to Chester W. Cuthell, and appearing in the Documentary Evidence.

(Adjourned until 10 o'clock A. M. April 4, 1931.)

E. W. GEISS, having been duly sworn, was examined and testified as follows:

BY THE MASTER:

Q. Will you give your full name and address?

A. E. W. Geiss; 204 East Market Street, Bethlehem, Pa.

BY MR. WOOD:

Q. What position do you occupy, or what is your occupation?

A. I am assistant in the Controller's Office of the Bethlehem Shipbuilding Corporation, Ltd.

Q. How long have you occupied that position?

A. Since December, 1917.

MR. WOOD: Mr. Master, there was offered at the last trial of this case, in connection, I believe, with the testimony of Mr. Piez, a copy of a revised contract between the Fleet Corporation and the American Shipbuilding Com-

pany, which is the contract that is referred to or eventuated from some of the other documents that have been offered here, the contract bearing date of October 24, 1918. This contract, together with certain attachments in the way of what are apparently inter-office communications, was offered as Exhibit B-8. We desire to offer it at this time, to be given the same exhibit number.

THE MASTER: If there is no objection, it will be received with the same exhibit number, B-8.

BY MR. WOOD:

Q. I hand you the papers which have been introduced as Exhibit B-8, being a contract dated October 24, 1918, between the American Shipbuilding Company and the Emergency Fleet Corporation, and ask you if you have seen that contract, or a copy of it, before?

A. Yes, sir.

Q. Have you made up a statement adapting the terms of that settlement contract to Bethlehem's contract and Bethlehem's contract program?

A. Yes, sir.

Q. I hand you a paper introduced at the last trial as Exhibit B-12 and ask you if that is the paper to which you have referred as a statement adapting the basis of settlement in the American Shipbuilding contract to the Bethlehem contract?

A. It is.

MR. WOOD: We ask that the exhibit previously introduced as Exhibit B-12 be intro-

duced in this hearing and given the same exhibit number.

THE MASTER: If not objected to, it is received with the same number, B-12.

BY MR. WOOD:

Q. Was a copy of this statement, which has been introduced as Exhibit B-12, ever furnished to the Fleet Corporation?

A. Yes, sir.

Q. When?

A. Approximately three and a half years ago.

Q. And about how long before the last trial and before its introduction in the proceedings before Mr. Roberts?

A. I would say about a year and a half.

Q. This American Shipbuilding contract, Exhibit B-8, provided, did it not, that the contractors should be allowed ten per cent. on cost to be applied to the material and labor cost as it might ultimately be developed, with an allowance of twenty-five per cent. on the combined cost of labor and material for plant overhead and for all other descriptions of overhead; is that correct?

A. Yes, sir.

Q. Can you locate that provision in the American Shipbuilding contract readily? If not, of course the contract will speak for itself, but if you can readily point to that particular clause, I think you might do so at this time.

A. It is Article I, Item 1, headed "Cost."

Q. Have you undertaken to apply that provision of the American Shipbuilding settlement contract to Bethlehem's contract program, and if so, on what items of your exhibit is that application set forth?

A. Item No. 2.

Q. Items 1, 2 and 3, is it not? I am talking about the application to the Bethlehem contract of ten per cent. over material and labor cost, including, as I understand it, a twenty-five per cent. overhead for labor and material.

A. That is Item No. 3 on my statement.

Q. The whole thing takes all three items, does it not, to give the result?

A. Yes.

Q. That is what I am trying to bring out. Those first three items relate to the adaptation of that part of the American Shipbuilding contract?

A. That is right.

Q. From what source were the material and labor cost shown on your exhibit taken?

A. They were taken from the records from which the stipulation of figures was obtained.

Q. I do not understand entirely what you mean. They were taken from the final audit?

A. Oh, yes, they are the material and labor proportion of the cost of ships as set forth in the stipulation.

Q. And as finally agreed upon?

A. Yes. It also includes, so as to conform with the American Ship contract, a deduction because of scrap previously credited to the cost of our ships, which under the American Ship contract was not so credited.

Q. Now will you tell us, please, the significance of Item 4 of this exhibit and the source of the figures that it contains and the method of calculation employed?

A. Under the American Ship contract they were allowed an item of one and a half per cent. of the

original contract fixed prices, if my memory is correct, which allowance was for the purpose—the allowance, as a matter of fact, was not entirely clear, but it seems it was allowed for the purpose of defraying to loss or expense of turning the plant from a war-time plant back to a peace-time plant.

Q. Whatever the purpose, as I understand the situation, the American Shipbuilding Company had had certain contracts with the Fleet Corporation and certain fixed prices; is that right?

A. Yes.

Q. And this contract was substituted for that?

A. Yes.

Q. By agreement, at about the time referred to, in a memorandum sent by Mr. Schwab to Mr. Hurley some time in October, 1918; is that right?

A. That is right.

Q. And as a part of the terms of this readjusted payment, it was provided that there should be added to those other sums of various descriptions an amount equal to one and a half per cent. of the original fixed contract prices; is that right?

A. Yes.

BY THE MASTER:

Q. In the fixed contract price is there included the fee as well?

A. It was a lump sum. As far as American Ship was concerned, their original contracts were fixed price or lump sum contracts, and this contract of October 24, 1918, was a substitution therefor and was on a cost-plus basis.

BY MR. WOOD:

Q. With these various elements that you are describing as a part of the compensation?

A. Yes, the contract describes the elements of

cost which may enter into it, but in answer to your question, Mr. Master, I will say that the first contracts were fixed price contracts.

THE MASTER: My question was directed to the fact that as I understand Mr. Wood's question and your answer, as you were giving it orally, it related to what he called the contract price, and I was trying to make it clear that you were speaking of a contract price which included the base price or cost plus the fee as well, because your exhibit here shows that in Item 4 the percentage appears to be taken on what you call the original contract obligations, base price plus fee, and I do not want the oral evidence to create a conflict.

MR. WOOD: I think I can clear that up, Mr. Master.

BY MR. WOOD:

Q. You were adapting this American Shipbuilding contract of settlement to the Bethlehem program; is that right?

A. Yes.

Q. Now this provision in the American Shipbuilding contract which you are endeavoring to adapt provided for the addition to all other sums to be included in accordance with the contract, of an amount equal to one and a half per cent. of the original contract prices of the American Shipbuilding Company, for which contract prices this contract was substituted; is that right?

A. Yes.

Q. And those original contracts were lump sum contracts, so that the contract price included whatever the cost of the ship might have been and what-

ever profit, or amount in excess of the cost, the shipbuilder would receive under it?

A. That is right.

Q. While the Bethlehem contracts to which you were seeking to adapt it were of the form with which we are familiar?

A. Yes.

Q. Now in making that adaptation what did you regard in the Bethlehem contracts as the nearest equivalent that you could get to the contract prices in the earlier American Shipbuilding contract?

A. I used the base price set forth in the contract plus the fixed fee, which, in my estimation, made it comparable with the fixed price of the American Ship.

Q. It was as nearly comparable as any figure you could get under the two forms of contract?

A. That is right.

Q. Will you explain the significance of Item 5?

A. Under the American Ship cost-plus contract they were allowed to retain surplus materials. Under our contract we were not allowed to retain surplus materials, but turned them over to the Fleet Corporation. I have added here the salvage value of that surplus, which was estimated by the Fleet Corporation and ourselves at thirty-seven and a half per cent. of its original cost.

Q. Estimated by yourselves and the Fleet Corporation at thirty-seven and a half per cent. of its original cost when?

A. At the time of the settlement, or attempted settlement, of this case in 1922.

Q. Do you mean it was an agreed-upon figure?

A. Yes. In 1922, for the purpose of figuring savings, it was necessary that surplus material be de-

ducted from the cost, and it was agreed between us that only the salvage value of such surplus material was properly to be deducted, and we agreed in 1922 that the salvage value should be thirty-seven and a half per cent. of its original cost.

Q. And that is the figure you have used in your Item 5?

A. That is right.

Q. Now describe Item 6.

A. Under the American Ship cost-plus contract, there was an allowance for an adjustment of inventories. That, too, is somewhat ambiguous, but I took it to mean—though it may have meant something quite different—that it was to allow for a write-down of inventories left over at the end of the Shipbuilding contract to the then current prices of such material, and in adding the amount here I took our raw material inventories as of December 31, 1917, which were on hand when these contracts came into being and which inventories were used at the cost to us on these cost-plus contracts, and I assumed that the price of the inventories on hand at December 31, 1917, was roughly twenty-five per cent. below the current prices at the time they were consumed. These inventories of ours were accumulated in 1915, 1916 and 1917. Some of the items were at higher prices than the then current prices, but the average was lower. That was my interpretation of the clause in the American Ship contract with respect to adjustment of inventory.

Q. The clause to which you refer is Clause 4 of Article I and reads: "Depreciation, whether ordinary or due to special character of work, including a proper adjustment of inventory values"?

A. That is the clause, yes.

Q. Now if I understand you, at the time that both the American Shipbuilding Company and the Bethlehem Shipbuilding Corporation began doing work for the Government, they had on hand certain material?

MR. HALLETT: I beg your pardon, I do not think it appears that he knows anything about the American Shipbuilding Company. Unless he knows something about what the American Shipbuilding Company had on hand, I do not think you ought to bring it in.

Question withdrawn.

BY MR. WOOD:

Q. You interpreted that contract to mean such adjustments as might be required in order to put the value of the inventory at the time of the settlement on the completion of the work on the same basis as at the time of the beginning; is that right?

A. As I said before, I did not exactly know what it meant. I assumed that this was a reasonable interpretation of that clause, and, as I also said, it may have been entirely wrong. I mean that may not have been the meaning within the American Ship contract, but this seemed to me to be a reasonable interpretation of it.

Q. Mr. Geiss, what my difficulty is, I do not know that your interpretation is quite plain. That is what I am trying to get, and, as I understand it, you interpreted it to mean a provision for an adjustment of inventory values so that they would be on a common standard as of the time of the making of the original contracts and the settlement of the final contract. Is that what you mean, or do you mean something else?

A. My basis for that was that I felt these contract ships ought to consume materials at the current prices during the time the ship was being built. I did not think they should benefit by the fact that we had and used inventory on hand which was purchased by us at lower prices than the then current prices, which we intended to use on fixed price ships; so that I felt that this clause—as a matter of fact, the materials were used at cost to us, and, therefore, it became a benefit to the Fleet Corporation in the cost of the contract ships. This clause merely put back into our pocket—I mean in this comparison—the gain by the Fleet Corporation in the consumption of materials on hand, which were on hand at lower than current prices.

Q. You may have made it plain to the Master, but I confess you have not made it plain to me yet what the nature of this adjustment is, and I will state to you again what I understand it to be, in order to shorten the inquiry if I possibly can, that at the beginning of the period with which you are concerned a company, whatever that company may have been, would have on hand a certain stock of materials in its inventory; is that right?

A. Yes.

Q. Which would be of a certain value at that time; is that right?

A. It would be of a certain cost value.

Q. Of a certain cost value at that time, and as those materials went into the ships, they were taken into the ships, not at their then market value, but at their cost value?

A. That is right.

Q. And in the course of time and as those materials were consumed, other materials would be

purchased and would be on hand at the end of the period; is that right?

A. Yes.

Q. Those materials might have then a cost value or a market value in the aggregate equivalent to that at the beginning of the period, but at the same time represent either less or more material?

A. That is right.

Q. And what you were endeavoring to do was to adjust the inventory condition so that the company would be made whole?

A. That is the theory of it, Mr. Wood. The quantities at hand at the beginning of the period of construction of these ships and at the end of such period were so widely different that it would be practically impossible to put back the inventories into the same number of dollars that were on hand at the beginning, so that I thought a more simple way to do it was to take inventories on hand at the beginning of the period and assume merely, and entirely arbitrarily, although the sum is check, that the prices were practically twenty-five per cent. lower than would be the prices that we would have to pay for replacing materials. I think we are talking of the same thing, but wording it slightly differently.

BY THE MASTER:

Q. May I ask one or two questions, and that will help me to clear up in my mind what the testimony represents. Mr. Wood spoke of inventories at the end of the period. As I understand your testimony, Mr. Geiss, the inventories at the end of the period were totally disregarded?

A. Yes.

Q. In the ships that were built under your contracts that are in dispute, certain material was

taken into cost, and, to the extent that it represented inventory at hand at the time the contracts were entered into, it was taken into cost at the inventory cost on your books of that material?

A. Yes.

Q. To the extent that material was purchased afterward and used in the construction of the ships, it was taken into cost at the cost to you of purchasing that particular material?

A. Yes.

Q. What you have done in Item 6 is to take the inventory that Bethlehem had on hand December 31, 1917, to the extent that it was used in the construction of the ships, and only to that extent?

A. It was used many times over.

Q. I understand, but this represents the inventory actually used in the construction of the ships that was on hand December 31, 1917?

A. Yes.

Q. And you have adjusted your cost of that inventory as it appeared on your books by assuming an increase in price of twenty-five per cent.?

A. Yes.

Q. And that increase of twenty-five per cent., as I understand it, was an arbitrary, because the value or market price of that inventory, as the prices existed on December 31, 1917, varied up and down?

A. Yes.

Q. The aggregate of which, however, would show more than twenty-five per cent.?

A. That is right.

BY MR. WOOD:

Q. Now will you please describe the allowance which you have made for depreciation?

A. Under Bethlehem's contracts the Fleet Corporation allowed approximately $1,000,000 in the cost of the vessels to cover depreciation. I felt that that allowance was not sufficient, so, starting with the figure $1,000,000 as the amount allowed and using the plant values as of December 31, 1916—the reason for using them as of 1916 was that under our depreciation plan the depreciation for 1918 is based upon property values as of the next year but one previous, which would be 1916 in that case, so, explaining the calculation on this sheet—

MR. HALLETT: I could not hear that. It sounded to me as though you said that the depreciation for 1918 was fixed as of the year 1916.

THE WITNESS: No, I said it was based upon property values as of the end of the year 1916.

MR. HALLETT: And the 1917 one was also? The depreciation for 1917 was based on the same base, was it?

MR. WOOD: Suppose you let him tell.

THE WITNESS: At the time of the start of these contracts I assumed a property value, as shown on this sheet, of $18,496,569, and that is a depreciable property value as of Dec. 31, 1916. My next calculation is to determine the percentage of production of those plants which was available for commercial use at both Fore River and the Potrero Works of our Union plant. We were under obligation to the Navy to furnish it with seventy per cent. of our facilities at those two plants. At the other

three plants and the Alameda Works of Union, we were under no such obligation, so that one hundred per cent. of their facilities were available for commercial work. Taking those percentages of the original value results in the next column. I am assuming that you have a sheet in front of you and can follow me. The next problem after that was to determine what percentage of that portion of the plant available to commercial work was actually used by the Emergency Fleet Corporation and for what period of time. I assumed that of the thirty per cent. available at Fore River, the Fleet Corporation used seventy per cent. of that thirty per cent. for a period of two years, which would be twenty-one per cent. I assumed, in similar calculations for the other plants, different percentages and for different periods of time. Those carried to their natural conclusion gave me what I chose to call a weighted annual plant value used by the Fleet Corporation, which in this case amounts to $32,291,165. Dividing that weighted plant value which I said was used by the Fleet Corporation into the $1,000,000 which I previously said was allowed as cost to the Fleet Corporation, shows a percentage on plant of 3.1 per cent. I thought that was much too low and that because of overtime work the figures should be no less than say seven per cent.: so that my figure of $1,260,381 is the difference between $1,000,000, or 3.1 per cent. of that weighted plant value, and seven per cent. thereof.

BY MR. WOOD:

Q. The clause in the American Shipbuilding con-

tract that you were seeking to adapt applies to an allowance for depreciation whether ordinary or due to the special character of the work; is that right?

A. Yes.

THE MASTER: What is the percentage?

MR. WOOD: No percentage stated.

BY MR. WOOD:

Q. As I understand it, the allowance for depreciation made to you by the Fleet Corporation in its adjustment of costs was at the rate of 3.1 per cent. of something; is that right?

A. Yes, it was 3.1 per cent. of the weighted annual value of the plant used by the Fleet, as determined in that calculation.

Q. Now am I right in assuming that that represents a yearly or annual percentage assumed by the Fleet Corporation to appropriately represent depreciation during this period of use? Is that right?

A. That is right, yes, sir.

Q. What do you mean by special depreciation and by overtime depreciation, as distinguished from ordinary depreciation?

A. Ordinary depreciation assumes inherently the use of facilities for the period of eight hours a day. During a number of years we used our facilities in connection with this war program approximately on an average of sixteen hours a day. It is well known that machines working sixteen hours a day wear out or depreciate more than twice as fast as do machines which work only eight hours a day. The fatigue element enters into it very largely in the additional hours.

Q. What you mean is that if you determine an annual rate, an annual rate of three per cent. would

be proper for eight hours' use, but it would certainly be inadequate for sixteen hours' use a day during a year for the same machinery?

A. That is right, but I think 3.1 is not adequate for ordinary depreciation.

Q. I understand, but assuming it were, it would not be adequate for double the use in the same length of time?

A. That is right.

Q. Now in normal times, without regard to this special or overtime depreciation, what was and what had been Bethlehem's depreciation rate?

A. Approximately five and a half per cent.

BY THE MASTER:

Q. That is on the material that you were using here, that type of material?

A. On depreciable property.

BY MR. WOOD:

Q. That is on the class of property that is in your tabulation?

A. Yes.

Q. Is there a standard accounting practice governing the determination of normal depreciation in a shipbuilding plant?

A. No.

Q. Do you happen to know whether the rate of five and a half percent. used by Bethlehem in prewar times as representing normal depreciation, ever came under the review of the Government in any way, other than in connection with the settlement of these Fleet Corporation contracts?

A. Yes, it did.

Q. In what way?

A. The Navy Department adopted in their Man-

ual of Accounting, put out I think in 1922, our scale or schedule of depreciation rates.

BY THE MASTER:

Q. For the same class of depreciable property?

A. The Navy Department issued a manual of accounts to its accounting officers in 1922, and for the purpose of telling them approximately what a reasonable percentage allowance would be they printed our scale of rates into their accounting manual and described them as the depreciation rates of a large steel company.

BY MR. WOOD:

Q. Were those supposed to represent war-time conditions or normal peace-time rates?

A. Normal peace-time rates.

Q. And are those the rates resulting in your five and a half per cent. in peace-time which you have been speaking about, or are they some other rates?

A. No, they result in our five and a half per cent.

Q. Paragraph 3 of Article I of the American Shipbuilding contract provides for an allowance as follows, headed "Special Amortization."

BY THE MASTER:

Q. Before you get to that, I just want to ask one question to clear up a doubt. As I understand it, Mr. Geiss, so that there will be no question about it on the record, the depreciable property on which the item appearing in No. 7 of this schedule was taken, does not include any property at all which you have treated as either property scrapped, for which a credit was taken, or surplus material turned over to the Emergency Fleet Corporation?

A. Oh, no.

Q. The reason I ask that is because you speak in here of machinery and I thought that possibly, in view of the terms of these contracts, machinery might or might not be included, and I wanted to make it clear that it was not.

A. No, the figure used in Item 7 is property and plant values as taken from our books ex non-depreciable items such as land and other things.

Q. And also in the other things, the class of property that you have treated as property returned to the Fleet Corporation and property scrapped?

A. No, the scrap and surplus materials were scrap and surplus materials resulting from the construction of ships and had no relation to plant facilities.

Q. No relation to plant facilities at all?

A. No.

BY MR. WOOD:

Q. This 3.1 figure or per cent. which you have used there is a depreciation allowed by the Fleet Corporation in its audit of costs as reflected in the final estimated costs under these contracts; is that right?

A. Well, as I said before the Fleet Corporation allowed as cost approximately $1,000,000. As you see, of course, that is a round figure that just happens to work out to 3.1 per cent. of the weighted annual value of the plant used by the Fleet Corporation.

Q. I understand that. I did not mean to inquire whether their figure was derived by the application of 3.1 per cent., but your percentage over the 3.1 is the result of applying the depreciation actually allowed by the Fleet Corporation in its audit of

final costs to the plant values that you have taken; is that right?

A. Yes.

Q. Did Bethlehem protest the allowance of that depreciation figure?

A. No, depreciation was a long and complicated calculation. The Fleet Corporation surveyed our plants, they re-appraised them, they classified the facilities that they found in our plants—that is, by years of life—they applied their own rates and I suppose we were continually fighting. But this allowance of a million dollars, approximately a million dollars, was the net result of all that discussion as to depreciation.

Q. I direct your attention to Paragraph 3 of Article I in the American Shipbuilding contract, which provides that in the adjustment made thereunder there should be allowed to the contractor an item called Special Amortization, Item 3 reading: "Special Amortization. The sum of $4,500,000 of the total sum, estimated at $6,900,000, expended and to be expended by the contractor for plant expansion, alterations and additional equipment, understood to be a part of the cost but on which no profit is to be taken, which sum of $4,500,000 is hereby fixed and agreed upon by the parties as representing the fair proportion of the total plant expansions, alterations and equipment which by reason of over-expansion are and will be of no value to the contractor in its normal business and except for the purpose of carrying out this contract." Now in what way and in what item of your exhibit have you undertaken to adapt that provision to the Bethlehem contract ship program?

A. Item 9 of my statement covers that provision.

Q. Explain to us what figures you used, what sort of a calculation you made, and why you made it.

A. The Fleet Corporation installed certain facilities in our yards at a total cost to them of $4,825,415. That was the total they would pay under the authorizations. Bethlehem paid $627,155 to complete those facilities which were started by the Fleet Corporation, to make them of value. Bethlehem on its own account during 1917 and 1918 installed additional facilities in its yards to a total cost of $6,145,931. Bethlehem also charged to operating expense accounts items of cost which the Fleet Corporation in its audit decided should have been charged to property and plant, and such items were disallowed from the costs of the ships by the Fleet Corporation. Therefore, taking the expenditures by the Fleet Corporation—and, by the way, in explanation of that item I assumed it was only fair, if we were going to claim amortization, to add on to the figure upon which amortization was to be based the facilities installed and paid for by the Fleet Corporation, although under the contract with the Fleet Corporation they were expected to pay them themselves—so, adding the value of the Fleet Corporation facilities and the amounts expended by Bethlehem in completion of those facilities, the value of the Fleet's proportion of the use made by them of the facilities installed by Bethlehem on its own account, and adding also the items charged by Bethlehem to operating expense and disallowed by the Fleet Corporation, gives us a total of $10,767,916, which represents plant extensions during 1917 and 1918. That figure is comparable with the $6,900,000 mentioned in the American Ship contract.

Q. Why were these capital expenditures made during this period?

A. We started in 1915 and 1916 to enlarge our shipbuilding facilities, foreseeing a large use of such facilities because of the war. We hoped to make many millions out of our shipyards in securing contracts from foreign countries.

Q. I am afraid you do not quite understand my question.

A. I have not finished.

Q. I have not gotten back yet to 1915 and 1916. I am going back to that in a minute, but why were these capital expenditures, which I understand from your exhibit aggregate $10,000,000, made in 1917 and 1918?

A. I am leading up to that.

Q. All right, Sir, go ahead.

A. In 1917 and 1918 expenditures made by Bethlehem on its own account were partially in completion of a program set out in 1915 and 1916 for this large expansion. In spite of the fact that we contended with the Fleet Corporation that we would spend no more of our own money in the extension of plant facilities, we did actually spend in 1918 $1,592,807. That was partially on new work and partially to complete work already begun.

Q. I understand that, but for what purpose were the capital expenditures made? In order to execute these contracts? Is that what you are trying to say?

A. They were made for the purpose of executing any contracts, and we felt, at least I felt, that in attempting to apply that clause in the American Ship contract which you just read, it was fair to

take similar expenditures made by Bethlehem for the purpose of a war construction program.

Q. That is what I am trying to bring out. They were capital expenditures that were made in connection with the war program?

A. Yes, they were. Those facilities were worth no more to us at the end of that program than they were to the American Ship. That is, we had the same loss to sustain that they did.

Q. The same over-expansion on account of the war program?

A. Exactly the same.

BY MR. HALLETT:

Q. You do not know about that?

A. It just naturally follows. Since shipbuilding collapsed everywhere after the war, it naturally follows that there was not any shipyard which needed the facilities which were put in to take care of the war program.

BY MR. WOOD:

Q. You have made a division of those capital expenditures on some sort of a percentage basis, and you have made somewhat the same sort of a division of the depreciable property on which you calculated your depreciation item. Will you tell us how that was made and what those percentages represent?

A. Yes. Going back and explaining the percentages as used by me in the depreciation item, which percentages are the ones used on the amortization item as well, as I explained before—

BY THE MASTER:

Q. The same explanation applies to this as applied to the other?

A. I should like to make just a little fuller ex-

planation. Take the Fore River plant, in which I stated that thirty per cent. of the plant was available for commercial work, and that seventy per cent. of that portion of the plant available was used by the Fleet Corporation for a period of two years. Now that seventy per cent. is supposed to cover contract ships only. What I did to obtain the percentage, I took the direct labor in the yard, I assumed those same percentages of labor as I had used for plant, and I then took the direct labor on the contract ships, to which I added inter-plant work in our five plants. We did work at one plant for ships being built at another plant. For instance, Moore plant constructed marine auxiliary machinery for many of the ships built at other plants. Harlan plant built lifeboats and furnishings. Sparrows Point built engines for other ships. So that while one ship was laid down at, say, Fore River, Fore River did not do all the work on that ship. It obtained a certain portion of the ship from other of our plants. Likewise, Fore River did work for ships laid down at one of the other plants. So that that figure of seventy per cent. at Fore River, and the other percentages mentioned at the other plants, is the proportion of direct labor on the ships built at that plant plus the direct labor in the inter-plant work which that plant did for the other plants.

BY MR. WOOD:

Q. Speaking of Fore River again as an example. Fore River was doing work for the Navy and doing work for the Fleet Corporation?

A. Yes.

Q. And first you split these capital expenditures at Fore River between the proportion applicable to

the Navy program and the proportion applicable to commercial work; is that right?

A. Yes.

Q. And then you applied to that proportion representing the amounts attributable to commercial work, or assignable to commercial work, that proportion which the direct labor cost in commercial work at Fore River Yard devoted to its contract ship program was to the total direct labor?

A. That is right.

Q. In this calculation of amortization you have included the expenditures made by the Fleet Corporation, as I understand it; is that right?

A. Yes, I have.

Q. And that is entered into your gross figure of $170,000,000; is that correct?

A. Yes.

Q. Have you credited the Fleet Corporation, in making the final adjustment here as to the amount remaining due under this attempted adaptation of the American Shipbuilding contract, with the advances made by it or payments made by it or assumed by it in connection with the expansion program?

A. Yes. Item 10 on my exhibit allows the credit for the payment made on plant facilities, made by the Fleet Corporation.

Q. What would the result have been if you had disregarded the advances made or expenditures assumed by the Fleet Corporation in this plant expansion program altogether, in determining your amortization allowance of sixty-five per cent., and confined that allowance to that percentage of the expenditures made by Bethlehem only?

A. The net result would have been an additional

cost to the Fleet Corporation equal to thirty-five per cent. of $4,632,212.

Q. That is, it would have increased the total amount resulting from this adaptation if you had confined your amortization adjustment to Bethlehem's own expenditures?

A. It would not have increased the amount payable to Bethlehem. It would have increased the cost to the Fleet Corporation if we had not taken back and assumed ourselves thirty-five per cent. of the cost of facilities installed by the Fleet.

Q. Did Bethlehem make any capital expenditures in plant expansion at its shipbuilding plants prior to 1917?

A. It made huge expenditures in 1916 and 1915.

Q. For what purpose?

A. For the purpose of expanding our shipyards to take care of what we foresaw would be a tremendous shipbuilding program at high prices.

Q. And a shipbuilding program brought about by what?

A. By the War in Europe.

Q. And those facilities, of course, were used in the carrying out of this program?

A. Yes.

Q. Were Bethlehem's shipbuilding plants in 1915, and prior to the making of these expenditures in 1915, 1916 and thereafter, of sufficient capacity to take care of normal peace-time demands?

A. Yes, to the extent that we were engaged in ship building. We bought two new shipyards in 1916. We bought the Sparrows Point Yard and we bought the Alameda plant at San Francisco, in addition to which we expanded the plants already owned by us.

Q. I am not speaking now of what you may have paid for some existing yard that you bought, but what I am asking you is whether the capacity of the yards which you had in 1915, and the capacity of any additional yards which you bought during that period, were sufficient to meet normal peace-time requirements without this expansion program and the making of these capital expenditures?

A. Yes, sir, they were.

Q. What is the fact as to the demand for the use of these expanded facilities after the termination of the War?

MR. HALLETT: I think that is going pretty far afield. I will admit that there was a slump in 1922 in all shipbuilding. I do not see that that is at all material in the comparison of a contract made in 1918.

THE MASTER: What is the purpose of the offer, Mr. Wood? Do you think it is material?

MR. WOOD: Although that is a matter of common knowledge, this paragraph 3 which we are endeavoring to adapt here, as we are interpreting it, provides for the absorption by the Fleet Corporation of sixty-five per cent. of the amortization of plant expansions which are assumed to be of no value to the contractor in ordinary peace times. My interpretation of that contract may be entirely different from Mr. Hallett's, but that is the way I read it. Now Mr. Geiss has told us of large capital expenditures which we think are of similar character, made not only during 1917 and 1918, but beginning with 1915 and 1916, to provide a capacity due to war-time requirements, whether we were in

the war or not, with the result that at the end of the war we had yards of a certain capacity by reason of this expansion. Now I am asking Mr. Geiss what is the fact as to the utility of those expanded facilities at the termination of the war.

BY THE MASTER:

Q. May I ask whether, as a foundation for the comparison, the amortization allowance under the American Shipbuilding contract related to facilities installed solely for the Fleet Corporation's program, or for others? Because it seems to me that until we have the basis for comparison, we may be comparing two totally different things. If the Fleet Corporation's allowance applied to all of its war-installed facilities, that is one thing; but if it applied solely to those for the Fleet Corporation contracts, it may be another thing.

A. I am making no attempt to secure amortization on the 1915 and 1916 expenditures. I am asking only for 1917 and 1918.

Q. I see; and those expenditures in 1917 and 1918 were for the purpose of meeting the extra demands upon your then plant facilities for war purposes?

A. Undoubtedly.

Q. And if they had not already been installed by you, it would have been necessary, in order to maintain the program demanded by the Emergency Fleet, to install them as soon as possible?

A. Yes.

Q. So that what you are asking an amortization on does not exceed the facilities required to meet the ship program of the Emergency Fleet Corporation?

A. That is right.

BY MR. WOOD:

Q. In fact, it does not equal it, does it?

A. No.

BY THE MASTER:

Q. But it does not exceed it? That is all I am interested in.

A. No.

THE MASTER: Now, as I understand it, Mr. Wood's question, Mr. Hallett, was directed to whether or not the facilities on which the amortization is taken in this tabulation were or were not usable thereafter for the commercial needs of the plant, and it seems to me that that is a perfectly proper question. Whether the witness can answer it or not, or whether you want to object to his competency, is another question.

MR. HALLETT: I do not care. Go ahead. I will be glad to have it all gone into.

(Original question read, as follows: "Q. What is the fact as to the demand for the use of these expanded facilities after the termination of the war?")

A. There was a complete collapse of shipbuilding shortly after the war. It is beginning to recover slightly now, but for many years our shipbuilding yards have been practically idle. From a force of approximately 70,000 men during the height of the war construction we have dropped to below—well, I will say approximately 8,000 men.

BY MR. WOOD:

Q. Your item of $6,982,424 represents what?

A. Represents the amount which this exhibit seeks to show would be due us even though our con-

tracts were put upon the same basis as the American Ship contract of October 24, 1918.

Q. After crediting the Fleet Corporation with all payments and with the amount of these capital advances?

A. That is right.

Q. Now there are certain items there under Paragraph 11 which you have added to that. What is the significance of those items?

A. They have nothing to do with the American Ship comparison, and the addition of those items was merely an attempt to include in this one statement the entire amount due Bethlehem both on its contract ships and on other items, such as requisition ships and cancelled ships.

Q. That is to say, there are involved in this case, not simply the payments due under the contracts, but certain amounts alleged to have been due on account of requisition ships and in respect of other matters which go to make up the total claim of Bethlehem?

A. That is right.

Q. And these additions are for the purpose of contrasting what that total claim would be if the contract ship program was adjusted to the American Shipbuilding contract and the other items added, as contrasted with the claim actually made?

A. That is right.

Q. I do not know, Mr. Geiss, whether it is a fact or not, but I rather think it is, that some of these added items in which you set forth certain amounts have been the subject of stipulation and adjustment, which changes the totals.

MR. HALLETT: Oh, yes, that is understood.

A. Some of them have, yes, sir.

Q. And in so far as it changed the total here, it would also change the comparative total in the total claim made?

A. Yes.

MR. HALLETT: I will make a statement for the record, if you like, that so far as that Item 11 goes, we are taking no interest in those items, because it is understood they have been changed by stipulation, and the statement, so far as it goes from the Government point of view, would only be considered down to the item $6,982,424..

MR. WOOD: In order that the Master may understand the significance of this exhibit, and without attempting to tie myself down to any figures or bind my friends on the other side, to any figures, I understand, subject to correction, that in round numbers under the original and revised stipulations the payments agreed to be due to Bethlehem on the contract ship program, under the terms of the contract as interpreted by Bethlehem, are approximately $5,200,000, and that the significant figure in this exhibit to contrast with that is the figure of $6,900,000. There are, as the Master knows, disputes not only as to the right to recover under the contracts at all, but also as to their interpretation in certain instances, and this comparison of figures is not intended to be exact, but it gives the relation between the claims made under the contract and what Mr. Geiss has testified to as the amount payable under the adaptation to the American Shipbuilding settlement.

THE MASTER: Am I to be asked to take this testimony for the purpose of determining the basis of interpretation of the two contracts by comparing the Bethlehem contract with the American Shipbuilding revised contract or not?

MR. WOOD: No, sir.

THE MASTER: As I understand then, it is simply to show that if the Bethlehem claim were adjusted on the basis on which the American Shipbuilding Company claim was adjusted under the revised contract, it would amount to $6,900,000?

MR. WOOD: The only purpose, Mr. Master, of bringing this comparison into this case at all is this, that, as I understand it, although we do not know altogether what is in the minds of our adversaries, one of their contentions is that Mr. Schwab should have brought about a revision and readjustment of the Bethlehem contracts during his term of office as Director General. They have offered in evidence a memorandum of his to Mr. Hurley relating to the adjustment of this American Shipbuilding contract, which, I think the evidence shows, is the only contract that was readjusted, at any time during Mr. Schwab's term of office with the Fleet Corporation, with any ship builder, and our purpose here is, as well as we can, to put before the Master what the result would have been of such readjustment as we understand them to say Mr. Schwab should have brought about in our contracts.

BY MR. WOOD:

Q. Mr. Geiss, have you prepared a statement

showing the average profit on manufacturing cost made by representative industries in normal years?

A. Yes.

Q. I hand you a paper introduced at the last trial as Exhibit B-10, and ask you if that is the paper to which you refer?

A. Yes, it is.

Q. Will you please tell us the sources from which the facts stated on this series of papers so marked were taken?

A. Many of them were taken from Moody's Manual; others were taken from annual reports sent out by the companies.

Q. Now the first sheet on that Exhibit is a summary of the attached sheets which are in themselves self-explanatory and set forth the detail on which the summary is based; is that correct?

A. Yes.

Q. And am I right also in my understanding that each of the supporting sheets shows there itself the source of the information?

A. Yes.

MR. WOOD: We offer the Exhibit so described as Exhibit B-10.

MR. HALLETT: Objected to on the ground that it is entirely irrelevant, incompetent and immaterial.

THE MASTER: The Exhibit will be received subject to the objection and an exception allowed to the Government.

BY MR. WOOD:

Q. Have you also made up a statement of the manufacturing profit realized by the United States

Steel Corporation during the years 1916, 1917 and 1918?

A. Yes, sir.

Q. I hand you a statement introduced at the previous hearing marked B-11 and ask you if that is the statement to which you have referred?

A. Yes, sir.

Q. From what source was the information contained on that statement derived?

A. From the annual reports sent out by the United States Steel Corporation.

MR. WOOD: I offer the Exhibit in evidence under the same exhibit number that was introduced at the previous hearing.

MR. HALLETT: It is objected to on the same ground as to Exhibit B-10.

THE MASTER: The exhibit will be admitted subject to the objection and an exception allowed to the Government.

BY THE MASTER:

Q. I note in this Exhibit B-11 of the United States Steel Corporation that for the years 1917 and 1918 the profit is taken on a basis which excludes Federal Income tax. Does it also include a deduction of war profits?

A. Well the Federal Income Tax, by that is meant all income tax paid to the Federal Government, whether income or excess profit.

Q. So that the excess profit tax is not taken off before this profit is arrived at?

A. I would say that all taxes have been deducted.

Q. What I wanted to find out whether you are also excepting the excess profits tax?

A. Yes. All taxes are treated alike.

BY MR. WOOD:

Q. All Federal taxes are excluded, is that what you mean?

A. All Federal taxes are excluded from the cost.

BY THE MASTER:

Q. That is to say from this profit there must be paid the Federal Income and also the excess profit tax? A. Yes, sir.

BY MR. WOOD:

Q. Mr. Brown, in the course of this testimony, offered some Exhibits, B-3 and B-4, in which he undertook to make a comparison of the cost to the Fleet Corporation of the ships built by Bethlehem under the contract prices claimed by Bethlehem and the cost of ships built by other shipbuilders during the same period. You have seen those exhibits, have you not? A. Yes.

Q. And I think he said that so far as Bethlehem Ship was concerned that page of the Exhibit, whichever it may be, containing those figures concerning Bethlehem Ship, was furnished to him by you? A. Yes.

Q. Will you tell us from what source those figures were taken?

A. From the stipulation. I don't know the exhibit number.

Q. From which stipulation?

A. From the stipulation as originally made up and prior to the amendments thereto.

Q. Government Exhibits A and B, is that right?

A. Yes.

(Continued on page 1573, Volume III).